United States Court of Appeals

for the Second Circuit

APPENDIX

B
P75

75-1149

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1149

UNITED STATES OF AMERICA
Appellee,

—against—

VINCENT PACELLI, JR.
Appellant.

APPENDIX, VOLUME ONE

STEVEN B. DUKE
PIERCE O'DONNELL
Attorneys for Appellant Pacelli
127 Wall Street
New Haven, Conn.
(203) 436-3610

PAGINATION AS IN ORIGINAL COPY

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VOLUME ONE

VOLUME TWO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA :

-v- :

VINCENT PACELLI, :

Defendant. :

----------X

001

INDICTMENT

73 Cr. 105

The Grand Jury charges:

From on or about the 4th day of February, 1972 up to and including the 11th day of February, 1972, in the Southern District of New York, VINCENT PACELLI, the defendant, and Barry Lipsky, named herein as a co-conspirator but not as a defendant, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate one Patsy Parks, a citizen of the United States of America, in the free exercise and enjoyment of a right and privilege secured to her by the Constitution and laws of the United States and because of her having exercised said right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the narcotics laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court, to wit, the case of United States v. Vincent Pacelli et al., 71 Cr. 614, thereby causing the death of said Patsy Parks.

It was part of the plan and purpose of said conspiracy that defendant VINCENT PACELLI and co-conspirator Barry Lipsky, on or about February 4, 1972, would transport Patsy Parks in an automobile for the purpose of interfering with her anticipated testimony in the case of United States v. Vincent Pacelli et al., 71 Cr. 614, a matter then pending before the United States District Court for the Southern District of New York.

(Title 18, United States Code, Section 241.)

Jr:rs
619

COUNT TWO

The Grand Jury further charges:

On or about the 4th day of February, 1972, in the Southern District of New York, VINCENT PACELLI, the defendant, unlawfully, wilfully and knowingly, and by threats and force, did endeavor to influence, intimidate and impede one Patsy Parks, who was to appear as a witness [for the United States] in the case of United States v. Vincent Pacelli et al., 71 Cr. 614, in the District Court for the Southern District of New York, and did injure said Patsy Parks in her person on account of her having attended as a witness and having testified before a Grand Jury duly impaneled by said Court in a matter pending therein, to wit, a narcotics investigation involving defendant VINCENT PACELLI.

(Title 18, United States Code, Section 1503.)

Foreman

WHITNEY NORTH SEYMOUR, JR.
United States Attorney

WMP,JR:as
72-2619

003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA :

-v- :

VINCENT PACELLI, JR., :

Defendant. :

----------X

BILL OF PARTICULARS

73 Cr. 105

S I R S:

The United States of America, as and for its Bill of Particulars, heretofore ordered by the Court and consented to by the Government, alleges as follows:

Count One

1. The approximate dates on which the conspiracy was formed and terminated are February 4, 1972 and February 12, 1972.

2. The conspiracy took place in New York City, New Rochelle and Nassau County, all in the State of New York.

3. The names of other conspirators known to the Government are: Al Bracer, Barbara Jalaba and Beverly Jalaba. The addresses of these persons are unknown to the Government.

4. The manner and means by which defendant Pacelli and the co-conspirators conspired to injure and oppress Patsy Parks was to kill her by stabbing. (Paragraphs 8 through 11 of defendant's motion papers.)

5. Paragraphs 12 through 20 of defendant's motion- The defendant stabbed Patsy Parks to death in Massapequa,

New York. Both the defendant and co-conspirator Barry Lipsky neither threatened nor intimidated Patsy Parks.

6. Paragraphs 25 through 27 of defendant's motion papers - Prior to the formation of the conspiracy, Patsy Parks had given information to a federal grand jury concerning violations of the narcotics laws. The defendant and co-conspirators knew of Patsy Parks' appearance before the Grand Jury. The substance of the information given by her related to cocaine transactions involving Vincent Pacelli, Jr. and others.

7. Paragraph 44 of defendant's motion papers - Pacelli anticipated Patsy Parks' testimony.

8. Paragraph 45 of defendant's motion papers - The conspirators planned to kill Patsy Parks, thus interfering with her proposed testimony.

9. Paragraphs 46 through 51 of defendant's motion papers - Barry Lipsky was in no way employed by the Government during the conspiracy, nor was there any understanding or agreement between Lipsky and the Government relating to Lipsky's supplying information to law enforcement authorities.

10. Paragraphs 52 and 53 of defendant's motion papers - The purpose of the conspiracy was to violate Patsy Parks' civil rights and obstruct justice by killing Patsy Parks. This killing was done by stabbing in the early morning hours of February 4, 1972 in Massapequa, New York.

Count Two

11. Paragraphs 56 through 67 of defendant's motion papers - The threats, force and intimidation of Patsy Parks occurred in Massapequa, New York, and their nature consisted of killing Miss Parks by stabbing. The defendant was the one who actually stabbed Miss Parks to death, and used a knife to accomplish the killing. The defendant was endeavoring to prevent Miss Parks from testifying against him at his upcoming narcotics trial.

12. Paragraph 69 of defendant's motion papers - Patsy Parks was to appear as a Government witness in a federal narcotics case being prosecuted by the United States.

13. Paragraph 73 of defendant's motion papers - The defendant injured Patsy Parks by stabbing her in an automobile in Massapequa, New York.

14. Paragraphs 74 and 75 of defendant's motion papers - Patsy Parks testified before the Grand Jury on May 27, 1971, and the substance of her testimony related to cocaine transactions involving Vincent Pacelli, Jr. and others.

15. Paragraph 76 of defendant's motion papers - Pacelli was informed by Patsy Parks herself that a Deputy United States Marshal had attempted to serve her with a subpoena to appear at his trial.

16. Paragraph 78 of defendant's motion papers - It will be claimed that the defendant injured Patsy Parks

WMP,JR:AS
72-2619

both as punishment for having testified before the Grand Jury and in order to prevent her from testifying at his narcotics trial.

Dated: New York, New York
April 20, 1973

Yours, etc.

WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York
Attorney for United States of America
Office and Post Office Address
United States Courthouse
Foley Square
New York, New York 10007

To: JOSEPH J. BALLIRO
44 School Street
Boston, Mass.

By: _____
WALTER M. PHILLIPS, JR.
Assistant U. S. Attorney

NICHOLAS L. CASTELLANO
100 East Old Country Road
Mineola, New York

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT 2/6/73 Tenney

JUDGE CAGLIARDI

73 CRIM. 105

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

VINCENT PACELLI 2-28-75

ATTORNEYS

For U. S.: 264-6345

WALTER M. PHILLIPS, JR. AUSA

For Defendant:

Patrick Wall - Steven Duke
36 W. 44th St., N.Y. 986-6688
10036

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk		6/4/73	Cagle Keen	5 —	
J.S. 3 mailed	Marshal		6/7/73	Cagle Keen		5 —
Violation comp. #72-2619	Docket fee		3/7/73	Pacelli Duos	5 —	
Title 18			3/11/75			5 —
Sec. 241 Civil rights viol. (ct.1)						
1503 obstruction of justice (ct.2)						
TWO COUNTS						

DATE	PROCEEDINGS
1-31-73	Filed Indictment (related to 72 CR 664, 72 CR 1319 and 71 Cr 611) assigned to Judge Cagliardi - (open) (closed)
1-31-73	Filed affidavit for writ of habeas corpus, writ issued ret 4-5-73.
2-5-73	Deft. produced on writ - no Attorney. All matters adj. to 2-6-73 at 2:15 P.M.
2-6-73	Deft. produced on writ (Atty. Stanley Arkin present for arraignment only). Deft. pleads not guilty. Writ adj. to 2-13-73 at 10 A.M. Bail fixed at $100,000. cash or surety. 10 days for motions. Case re-assigned to Judge Tenney. -- Tyler, J.
2-13-73	Deft.. prodeuced on a writ. (atty. not present) Writ adjourned to 2-20-73 at 10 A.M. Tenney, J.

(over)

2-20-73	Deft. (atty. present) Deft. produced on writ. 20 days for motions. Writ adjourned to 4-30-73 at 10 A.M. Tenney,J.
2-27-73	Pacilli- Filed notice of appearance by atty Joseph Balliro 44 School St. Suite 406 Boston Mass. 617-227-5822 617-227-4006.
3-12-73	Pacelli-Filed motion to strike Prejudicial surplusage.
3-12-73	Pacelli-Filed memorandum of law in support of motion to strike Prejudica surplusage
3-12-83	Pacelli-Filed motion for production of Grand Jury minutes and statements of Barry Lipsky
3-12-73	Pacelli-Filed memorandum of law in support of motion for production of g minutes and statements of Barry Lipsky.
3-12-73	Pacelli-Filed motion for bill of particulars.
3-12-73	Pacelli-Filed memorandum of law in support of motion for bill of partic
3-12-73	Pacelli-Filed ~~memorandum~~ motion to dismiss indictment.
3-12-73	Pacelli-Filed memorandum of law in support of motion to dismiss indictme
3-12-73	Pacelli-Filed motion to disqualify prosecutor.
3-12-73	Pacelli-Filed memorandum of law in support of motion to disqualify prose
3-12-73	Pacelli-Filed motion for transfer on the ground of prejudice.
3-12-73	Pacelli-Filed memorandum of law in support of motion for transfer on gro of prejudice.
3-12-73	Pacelli-Filed motion for psychiatric examination of Barry Lipsky.
3-12-73	Pacelli-Filed memorandum of law in support of motion for psyciatric exam of Barry Lipsky.
3-12-73	Pacelli-Filed motion for discovery and inspection.
3-12-73	Pacelli-Filed mamorandum od law in support of motion for discovery and i
3-12-73	Pacelli-Filed motion for production of witnesses for interview.
3-12-73	Pacelli-Filed memorandum of law in support of production of witnesses fo interveiw.
3-16-73	Pacell-Filed Govt's affidavit.
3-16-73	Pacelli-Filed Govt's memorandum of law.
4-20-73	Filed Bill of Particulars.
4--19-73	Pacelli-Filed Opinion # 39420 dtd. 4-18-73 Granted in part and denied in part, on motions to dismiss,to transfer,disqualify the prosecuto etc. Tenney,J.
4-26-74	PACELLI- Filed notice of motion for continuance and further discovery.
4-26-73	PACELLI- Filed memo endorsed on defendants motion for continuance and further discovery denying same. So ordered. - Tenney, J. (m/n)
4-26-73	Pacelli-Filed memorandum of law in support of motion for continuance.
4-30-73	Jury trial begun before Tenney, J.
5-1-73	Trial continued.
5-2-73	Trial continued.
5-3-73	Trial continued and concluded. Jury finds deft. guilty as charged. Pre-sentence investigation ordered.Sentence adjourned to 6-1-73. Deft. remanded. Writ adjourned until 6-1-73
6-28-74	Filed Notice of Appearance of Patrick Wall and Steven Duke

PROCEEDINGS

5-31-73	Pacelli- Filed notice of motion for judgment of aquittal
5-31-73	Pacelli- Filed notice of motion to strike testimony
5-31-73	Pacelli- Filed memorandum in support of motion to strike testimony.
5-31-73	Pacelli- Filed motion for a new trial
5-31-73	Pacelli- Filed memorandum in support of motion for a new trial.
5-31-73	Pacelli- Filed motion for production and in camera inspection of witness statements
6-1-73	VINCENT PACELLI - Filed Judgment(Atty.present,deft produced in Court pursuant to a Writ)the deft is committed to the custody of the Atty.Gen'l for imprisonment for LIFE on count 1, and FIVE YEARS on count 2, to run concurrently with each other, and CONSECUTIVELY with sentence imposed in Indictment 71 Cr. 611....Tenney, J. Entered 6-4-73----------
6-6-73	PACELLI- Filed memo endorsed on defendants notice of motion for a new trial: "Motion denied. So ordered. - Tenney, J." Filed memo endorsed on defendants memorandum in support of motion for a new trial: "Motion denied. So ordered. - Tenney, J." (m/n)
6-6-73	PACELLI- Filed memo endorsed on defendants motion to strike testimony: "Motion denied. So ordered - Tenney, J." Filed memo endorsed on defendants memorandum in support of motion to strike testimony: "Motion denied. So ordered. - Tenney, J. (m/n)
6-6-73	PACELLI- Filed memo endorsed on defendants motion for judgment of acquittal: "Motion denied. So ordered. - Tenney, J." (m/n)
6-6-73	PACELLI- Filed memo endorsed on defendants motion for production and in camera inspection of witness statements: "Motion denied. So ordered. - Tenney, J. (m/n)
6-6-73	PACELLI- Filed notice of motion for extension of time to file motions.
6-13-73	VINCENT PACELLI. *Filed Commitment & entered return, Deft. Delivered to the* Warden, Federal Detention Hdqrs., New York, N.Y.
6-13-73	VINCENT PACELLI-Filed wit of habeas corpus with Marshal's return-Writ Satisfied 6- --Tenney, J.
6-11-73	Filed notice of appeal to the USCA for the 2nd Circuit from the judgment of the USDC entered 6-1-73. $5. pd.(mailed notices to the AUSA and deft.)
7-24-73	Vincent Pacelli Jr.-Filed order granting the deft time to transmit the record on appeal. So Ordered Tenney,J.
Aug 2-7	Filed stipulation designating exhibits for determining the appeal.
Aug 2-7	Filed stipulation that documents attached be transmitted as part of the record on appeal.

9-3-73	VINCENT PACELLI: FILED A NOTICE TO THE DOCKET CLERK: THE SUPPLEMENTAL RECORD HAS BEEN CERTIFIED AND TRANSMITTED TO THE U.S.C.A., SECOND CIRCUI ON THIS DATE.
5/16/74	Filed true copy of order and opinion of the U.S.C.A. that the judgment of the district court is reversed and that the action be and it hereby is remanded to the said dist. court for further proceedings in accordance with the opinion of this court. Clark mailed copies. (case reopened)
6-12-74	Case reassigned to Stewart,J.
Jul- 2-74	Filed order that the trial in the action (VINCENT PACELLI) and the trial subp. previously issued therein is adj. to 10-7-74 - Stewart,J.
	VINCENT PACELLI/
Oct.29-74	Filed/Affidavit for Writ of Habeas Corpus Ad Prosequendum
Oct.31-74	Filed Defts. Notice of Motion at a date set by the court, for an order dismissing indictment; for an order to submit to an examination; for an order disqualifying Barry Lipsky as witness etc.
Nov.8-74	Deft (atty. present) produced on writ. Counsel to advise Court of day set for trial (as agreed) Writ adjd. to 11/12/74 - STEWART,J.
Nov.12-74	Deft.(atty. present) produced on Writ. Trial set for 1/15/75 at 10AM. Writ adjd. to 1/15/75 - STEWART,J.
11-27-74	Filed Transcript of record of proceedings dated 9-23-74
12-6-74	Filed Deft's Motion disqualify Barry Lipsky as a Witness
June 19-74	(Received 12/12/74)--Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum
7-24-74	(Received 12/12/74 -- Filed Order that the tapes of conversations dtd 3/13/; 4/6, the two of 4/10,4/11,5/2 and 5/23,1972 sealed by order of this Court be unsealed. GAGLIARDI,J.
12-18-74	Filed Govt. Affidavit in support of Government's request for the issuance of a warran for the apprehension of Michael Elazat a material witness in this case.
12-20-74	Filed Government's Memorandum of Law in opposition to Deft's. Motion for Relief before trial.
12-20-74	Filed Govt. Affidavit in opposition to deft's several motions for relief before trial
1-9-75	Filed defts. affdt. and notice of motion for disclosure of location of witnesses or produce same for interview,(ret. on: date to be fixed by Court)
1-9-75	Filed defts. memorandum in support of above motion for disclosure.
1-9-75	Filed defts. affdt. and notice of motion for discovery,ret. on:date to be fixed by court).
01-15-75	Filed one envelope sealed by order of the court and not to be opened until furhter order and placed in vault in Clerks office in Rm.602.
01-15-75	Deft. produced on writ. Pre trial conference held. Trial set for Jan. 20,1975 at 10am. Writ adj. to 1/20/75,at 10am Stewart,J.

see Pg. -5-

DATE	PROCEEDINGS	Date Order Judgment N
01-23-75	Filed one sealed envelope(court exhibit#6) and impounded in vault, in Cashier's office, Rm.602 and not to beopened until further order of this court. So ordered, Stewart, J.	
1-27-75	Filed govts. affdt. of James Nesland.	
-28-75	Filed writ to produce Michael Elazat, a witness on Dec.18,1974. Stewart, J. and writ satisfied on 1/19/75.	
-20-75	Jury empaneled and trial begun. Deft. produced on a writ and adj. for every trial date. Stewart, J.	
01-21-75	Trial contd.	
1-22-75	Trial contd.	
1-23-75	Trial contd.	
1-24-75	Hal contd.	
1-27-75	Trial contd.	
1-28-75	Trial contd.	
1-29-75	Trial Contd.	
-30-75	Trial contd.	
-31-75	Trial contd. and concluded. Jury finds the deft. GUILTY on each of counts 1 and 2 as charged in theindicement. Court directs an up date on Pre-Sentence Investigation. Sentence adj. to Feb. 28,1975 at 9:30am. Deft, remanded on this indictment also. Stewart, J. (remand to marshals office)	
-26-75	Filed deft's memorandum and notice of motion for a new trial.	
-03-75	Filed Governments memorandum respecting the sentencing of deft.	
-04-75	Filed Governments request to charge	
-04-75	Filed deft's request to charge	
-04-75	Filed deft's trial memorandum concerning the Govt's trial memoranda and other matters	
-04-75	Filed Govt's trial memorandum I	
-04-75	Filed Govt's trial memorandum II	
-04-75	Filed Govt's trial memorandum III	
-04-75	Filed Govt's trial memorandum V	
-04-75	Filed Govt's trial memorandum VI	
-04-75	Filed Govt's trial memorandum VII	
-04-75	Filed Govt's memorandum submitted in support of its offer into evidence of certain statement made by the deft. (IX)	

EXHIBIT D – p. 1

X9

here but it will [illegible] time will tell about it. If you don't

because of his poor academic showing to enroll him at Admiral Farragut Academy, on Boca Ciega Bay in

6

Principal Probation Officer

Date
12/73

Deputy Director of Probation

abc

12

was never firmly established.

183

Mineral Inspection Office Deputy Director of Probation

Date
2/25/73

ow."

not?

him

n."

kind

concerning how the cab was going to be paid paid?

A Yes. He said it was outside the city limits so that was a flat rate, so much money. He named a figure. We haggled over the figure a little bit and I forget what he said, $12 or $14, I don't remember exactly, and I said all right, whatever it is, just go ahead. Drive.

[illegible] April 11, 1972 and read the attached [illegible]

II.

THE [illegible] ARE [illegible] IN THIS TRIAL

Contrary to the government's assertion [illegible] pp. 4, 6) the Second Circuit never ruled on this matter in the appeal following the first trial. Nor were the tapes or transcripts offered in the first trial ~~The existence of the tapes did not become known until the trial in April, 1972.~~ Moreover, the Court of Appeals' decision in United States v. Sperling, (G.M. 17, pp. 4-5) clearly does not hold such evidence per se inadmissible. As that Court indicated, this is a situation for the sound exercise of discretion.

Defendant submits that the evidence is admissible at this trial. First, since the last trial -- indeed, since the Sperling trial -- significant new evidence has come to light which bears heavily on this matter and makes this line of inquiry compelling. As part of the material recently received from Lipsky's attorney, Walter Gwinn, defendant obtained a letter from Gwinn to Lipsky dated June 1, 1972 (copy attached hereto). In the letter Gwinn describes a recent

-8-

was

red light and I found both lenses on the floor in the front. I gave them back to him after placing the lenses in the frame.

He located the area where [he] felt was a good spot to get rid of the body.

There was woods on both sides and the main road was nearby. I stopped the car and he jumped out and opened the door and pulled her out in one motion.

He said to me to open the trunk and get the gasoline.

He pulled her in a few feet off the road and took the gasoline which I gave him and he poured the gasoline over her body. All four cans and he said he had gas all over his gloves so would I light the match.

It was a match from a pack that I had picked up at the Hippo for this purpose.

I lit the match and threw it on her body. I watched her body go up in flames.

We both got back into the car. I drove. He was having trouble with his glasses and once he got them fixed he drove.

As we drove back we discussed how Patsy was killed. He told me that to prove murder you need more than one witness. He told me not to talk with anyone about [it] and never go back to the Hippo again.

We drove back to his apartment.

I recall that it was about 5 o'clock in the morning on February 4th when Vinny stabbed Patsy Parks in the rented car while I was driving.

When we got to the apartment Vinny and I went in and got cleaning equipment, Ajax, Lysol and things like that to clean the interior of the car of the blood.

We drove over to a park area on the water nearby in New Rochelle and I cleaned the blood on the interior and he threw the gasoline cans away.

Before we arrived back at the apartment [we went] to a Marina to get rid of the knife. This is a few blocks from the house and not where we washed the car. Vinny wanted to get rid of the knife and he wanted to throw it into the water. It was daylight.

He didn't want to get out of the car at this time.

He handed me the knife that he killed Patsy with. It's a pocket knife. It folds up and is all one color, silver. The blade is about 4 inches long, the model number may have been K55 but I'm not sure.

I walked out to the end of the dock and flipped the knife out about twenty feet into the water.

It was then that we returned to the apartment to get the cleaning equipment.

After cleaning the car of Patsy blood, as I described before. He drove away and I was sitting next to him. Vinny wanted to get rid of the bloody towel and his gloves which he said had her blood on them too. So I tore the gloves up and we dropped the pieces and bloody towels in several trash cans along the way.

We got back to the apartment and he checked his clothes for blood and there wasn't any on him.

I laid down on the floor and fell asleep. I had a pillow and a blanket.

Present in the apartment was Beverly, Vinny, Barbara Jalaba, Beverly's sister, and a fellow named Abbe, her boyfriend, and a friend of Vinny's. They were there together that night. Barbara lives with her family in Southfield, Michigan.

Later, when I woke up, Beverly said to me that she and Barbara had taken the car to the market and had seen the blood in the carpeting and that they had worked

for over an hour trying to get it out.

We left the apartment to return the car that Patsy was killed in, about 2 to 3 p.m. on the same day, Friday, February 4th.

I drove in the Plymouth with Beverly and Abbe drove his car, a new brown Thunderbird, black top, with Barbara and Vinny in it. He has that car in Emily Flores name, to the best of my knowledge. She lives next door to Pacelli.

We returned the car and Beverly paid the bill. It was between two and three hundred dollars; she had the car for 3 to 4 weeks.

Then Beverly and I went over and got into the Thunderbird.

I recall now when Beverly and I were alone in the Plymouth that Patsy was killed [in] she asked me why didn't Vinny and I clean the blood up better. She complained about Barbara and her having to complete the job. Getting back again to the Thunderbird and they left me off at around

40th Street and Park Avenue. I walked up the street and got a cab home to 1420 Third Avenue. It was about 4 to 4:30 P.M.

I recall now that when we were riding back to the apartment after killing Patsy we had Patsy's pocketbook in the car. Vinny Pacelli wanted to get rid of the contents. I dumped everything into a trash can at a Texaco Station on First Avenue in the vicinity of Thirty Sixth Street. Before I emptied it however I removed about twenty dollars in cash from her pocketbook and put it in my pocket. In regard to the pocketbook I threw it down the trash shute at Pacelli's apartment.

The following day Beverly telephoned me and told me to come up to Vinny's aunt's house. The call was in the evening 6 or 7 o'clock.

Pacelli's aunt is Antoinette Bassi and she lives at 452 E. 118th Street Manhattan. They call her "Chucky".

Getting back to Friday afternoon, February 4th, when they dropped me off. I went back to my apartment,

got an Avis Credit Card and returned to 64th Street between Second and First Avenue and I rented an identical car, to the one Patsy had been killed in. That was a 1972 Plymouth color dark green, black top. This one had Jersey plates on it. I drove it back to my apartment and Beverly telephoned and asked me to bring the car up to Vinny's aunt's house.

I drove it up there between 6 and 7 P.M. on Friday the 4th and left the car with Vinny and Beverly. I took a cab back home.

When Beverly called me at home Saturday it was in the late afternoon and she told me to come up to his mother's house. She lives at 422 E. 118th.

Vinny told me when I got there that his lawyer told him the trial was coming up on the following Tuesday.

I remember talking to him about killing Patsy and he said it was a good thing he did what he did when he did it because she was a key witness against him.

Tuesday the trial started.

On Thursday, February 10, I received a telephone [call] from Beverly to come up to the aunt's [house]. This was about 5 P.M.

I left the house, took the rented Plymouth and went home.

I recall now that I didn't go home. I went over and stayed with Marge Jacklone.

On Friday, February 11th Margie borrowed the car [and] went to a friend's funeral in [the] morning and then when she returned I dropped her off at the Boutique, went home, packed, shaved cleaned up and then back to Margie's.

I took the boy out to dinner, Margie stayed in because she didn't feel well. I dropped the boy back and we talked about her meeting me in Florida.

I returned the car at the airport (La Guardia) about 8 or 8:15 P.M. and caught flight 611 Y coach, National Airlines - non-stop to Miami.

My friend Allen Harris picked me up at the airport. I stayed with him that night. His address is 1065 97th Street. It is his girlfriend's apartment, her name is Diane Kane.

I told Allen Harris the whole story about how Patsy was killed. He knows everything.

The next day I moved in with my sister at 1140 99th St., Bay Harbor Isle, Miami Beach. That was Saturday the 12th.

I stayed there three nights.

Then I moved back with Allen Harris.

Eventually on Saturday, February 19th Margie Jacklone and her son joined [me] in Florida and stayed two nights with me there.

During this time Margie and I discussed the killing of Patsy Parks.

I told Margie the entire story, the same as I had told Allen. I made a complete confession to her.

After that she moved to the Fountainbleau and stayed there in room 422. She was there from the 21st to the 29th.

On Saturday night, February 26, I was in the La Disque on 79th St., Causeway, Miami Beach, and I met Micky there. I had last seen him on the night Patsy was killed in the Hippo. I have been shown a photograph of a man and I have identified that photo as being that of Micky. It has a New York City Police number 365289, date 2-3-65 on it.

Mickey was with a girl. He said don't even sit down. He said I was hot and that I should decide what I have to do. Either go south and get lost or go back. I spent half a minute and left.

When I arrived the detectives were waiting for me. I accompanied them to Police Headquarters in Mineola on Long Island, where I made this statement of my own free will. It is all the truth and I feel relieved that I was permitted to talk about it.

(Signed) Barry Lipsky

X-9

DISTRICT ATTORNEY'S INVESTIGATION

COUNTY OF NASSAU

----------x

In the Matter re: :

Comp. #423/72 :

----------x

Police Headquarters
Mineola, New York
March 3, 1972

S T A T E M E N T

COMMENCED AT: 4:35 A.M. - WITNESS: BARRY GLEN LIPSKY

A P P E A R A N C E S :

STEVEN SCARING, Assistant District Attorney

Det. Raymond Book, Nassau County Police Department

Det. Roger Walker, Nassau County Police Department

Donald J. White, C.S.R., Confidential Reporter

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BARRY GLEN LIPSKY, being interrogated by Assistant District Attorney Steven Scaring, made the following statement:

MR. SCARING: Mr. Lapsky, my name is Steve Scaring. As I introduced myself to you before, I'm an Assistant District Attorney with the District Attorney's Office of Nassau County.

THE WITNESS: Yes.

MR. SCARING: This is Mr. Donald White. He's a Confidential Reporter. He'll be sitting down and taking everything that I say and everything that you say.

Det. Roger Walker will be sitting in. He's with the Homicide Squad, and I'm sure you met him before, and Detective -- I'm sorry, I don't know your name.

DET.BOOK: Raymond Book.

MR. SCARING: Raymond Book. Of what Squad?

DET. BOOK: 7th Squad.

MR. SCARING: 7th Squad, Nassau County Police Department.

THE WITNESS: Right.

EXAMINATION BY MR. SCARING:

Q Mr. Lapsky, we want to talk to you about the death of Patricia Parks which took place on February 4th, 1972.

A Right. I'm sorry. I don't mean to interrupt you, it's Lipsky.

Q I'm sorry. Lipsky. How do you spell that?

A L-I-P-S-K-Y.

Q Mr. Lipsky, for the record can you spell your full name and give us your full address.

A Barry Glen Lipsky, B-A-R-R-Y, G-L-E-N, L-I-P-S-K-Y. New York City address, 1420 Third Avenue.

Q Mr. Lipsky, before I talk to you I want to advise you that you do have the right to remain silent. Do you understand that?

A Yes, sir, I do.

Q All right. Have the detectives advised you of that right?

A Yes, sir, they have.

Q Fine. Do you understand that?

A Yes, sir.

Q All right. Do you understand that anything you do say can be used in evidence against you in court?

A Yes, sir, I do.

Q And have you been previously advised of that right?

A Yes, sir, I have.

Q Okay. And do you understand that you have a right to an attorney?

A Yes, sir.

Q Okay. And have you been previously advised of that right?

A Yes, sir.

Q And if you cannot afford an attorney, one will be provided for you?

A Yes, sir.

Q All right. Now understanding these rights, do you wish to talk to me at this particular time without having an attorney?

A Yes, sir, I do wish to talk to you at this

time.

Q Mr. Lipsky, can you tell me where you were living on February 4th, 1972?

A Same address I just gave you, 1420 Third Avenue.

Q Okay. And if I may go back one day, on Thursday, February 3rd, again were you at that particular address?

A I was residing there, yes, sir.

Q All right. Now, where were you that evening, that would be Thursday evening, February 3rd, 1972?

A You mean what, where I went that evening?

Q Yes, where did you go that evening?

A It was raining that evening. I went to eat dinner with a Margie Jacklone, J-A-C-K-L-O-N-E.

Q Who is Margie Jacklone?

A She's a personal friend of mine. She lives on East 52nd Street. And we ate dinner on East 52nd Street and First Avenue, a restaurant called Billy's.

THE WITNESS: [To the Reporter] Am I going too fast?

A [Continuing] We then went to the movies.

Q You went with Margie?

A With Margie, to the movies. The two of us went to the movies. After the movies we went to the discotheque, Hippopotamus, at East 54th Street.

Q Now, about what time did you get to the discotheque at East 54th Street?

A Between 11:00 and 11:30, sir.

Q I see. And what happened at that particular time and that place?

[Det. Sgt. Bonora entered the room.]

A With a group of people sitting in the booth. I'm sorry. They were -- we sat in a booth, table, so to speak, and there was some other people there and more people that we -- that I know, came in, and then this girl in question, Patsy Parks, came in.

Q All right. Now, do you know Patsy Parks?

A I am not -- I wasn't very close to Patsy Parks, but I know her. I knew her when I saw her.

Q Had you met her before?

A Yes.

Q Did you know where she lived?

A Not offhand, but I remembered in the papers

I didn't know when she came in there where she had been residing, but I since was told or read that she lives in East 76th Street.

Q Okay. Mr. Lipsky, when you went into the Hippopotamus, who was with you or who was in the booth that were sitting at?

A Well, I went in with Margie Jacklone. In the booth sitting was a man I know, Jay Kaufman; K-A-U-F-M-A-N.

Q Do you know his address?

A No. I'm sorry, I don't know his address. I think he lives down the Village somewhere that area.

There was a man there, older man named Carl Schlossberg, and a --

Q Do you know his address?

A No. I know he's in the garment center. He in business in the garment center. He has his own company. I think it's called Carlette, C-A-R-L-E-T-T-E and he was with a blonde girl.

Q Do you know her name?

A I don't. I don't know her name to this day I don't know that.

Q Okay.

A A friend of mine, people I know, Leni Febre, F-E-B-R-E. He came in a little later on with a girl named Toni. I think her name's Toni Starr, and a friend of his, Aaron Shaw, S-h-A-W. Let's see. I believe that was the whole group at the table.

Q Okay.

A When Patsy Parks entered.

Q Now, what time did Patsy Parks enter? This is Thursday evening now?

A Yeah. She came in at about after 12:30. You know, we went over the times in this when I gave the statement here, but the times are a little sketchy to me.

Q Was it after midnight?

A Yes, it was after midnight. It was more like, more toward, toward 1:00 o'clock. I don't -- I want to coincide with what I said previously, but I can't remember the exact times.

Q It was going into Friday then, the 4th of February?

A Yeah. Everybody was at the table already

when she came in.

Q Did she come in with anybody?

A By herself.

Q Did she say anything when she came to the table?

A She motioned for Mr. Febre, Bent Febre, to speak with her away from the table, which he did somewhat tardily.

Then he came over to me, Mr. Febre, and said to me, "She wants to talk to you."

I said, "What about?"

He said, "She wants to talk to you, to talk to her. She has something on her mind." And she -- I went over where she was sitting.

Q And where was she sitting?

A Next just adjacent table was an empty table, adjacent to the booth we were sitting at, within five feet of where we were sitting, and she said she wanted to see Vinnie, meaning Vincent Pacelli, Jr. She wanted to see Vinnie about something that had happened with a subpoena she had, somebody had tried to serve a subpoena on her at her home, and she didn't accept

service of it, and she was nervous, and she wanted to talk to him, she must talk to him tonight, and could I reach him.

And I said, "All right, I'll try and reach him," and I went and I left the Hippopotamus.

Q Let me stop you at that point.

A Yes.

Q Did you say anything at all to Patsy Parks concerning what she should do while you went or where she should go?

A I told her to stay in the Hippopotamus I took her from -- I asked her to come with me to the hall where it was quieter, it's noisy there. I asked her to come into the hall and sit, and there was a telephone booth, and tell me quietly what it was that she had on her mind, what the matter was, and she told me about the subpoena and her girlfriend answered the door and it was a subpoena with her name on it, and Vincent Pacelli's name on it.

And she knew what it was about, and she was concerned and she was looking for him to tell him about it. And I said, well, I could find him, I'd go

and get him. "Would you stay here in the booth with these people and I'll go and find him and come back."

Q All right. Let me stop you at that point.

A Yes, sir.

Q When she said that she knew what it was all about, did you inquire as to what she knew?

A No, I didn't ask her any questions. I just listened to what she said.

Q When you said with respect to would she wait in the booth, did she then go back to the booth and wait there?

A I believe she did. I left her at the booth or near the booth.

Q What did you do at that point?

A I went outside Hippopotamus, went to Third Avenue, got a cab, went up to New Rochelle in the cab to his home, Mr. Pacelli's home.

Q Let me stop you at this point. Had you called him before you went?

A No, he does not have a telephone.

Q Do you remember what kind of cab it was when you went?

A I think it was a Yellow cab and I think I told the detectives before it was one of the big ones. I don't know, specially made, the cars that are made just for cabs.

Q Checker cab?

A I think it was a Checker. I believe so.

Q So you went up then to Mr. Pacelli's home?

A Right, I went up to his home.

Q Do you know his address?

A 501 Pelham Road, New Rochelle, Apartment 2-F.

Q Now, this is sometime in the early morning hours of the 4th?

A Correct.

Q Okay, Friday.

A This is about prior to 2:00 o'clock.

Q Okay. When you arrived at his house, --

A Just prior to 2:00 o'clock.

Q Okay. What did you do when you got there?

A Well, I threw a couple of pebbles up to the window in the back and I said -- this is a split level apartment, so they shouldn't get nervous, somebody ringing the door at that late hour. And his wife looked

out the window.

Q Did you recognize his wife?

A Yeah.

Q And do you know her name?

A Beverly.

Q Okay.

A And they rang the buzzer for me to come through the doors. I came upstairs and he answered the door, with his wife.

Q Pacelli?

A The door. He answered the door, with his wife, and he said, "What's the matter?"

And I told him, I said, "The girl Patsy Parks is in Hippopotamus and she's looking for you."

And with that he proceeded to get angry or get perturbed about something now about a box, something about there was something about a box, some box that had been figured in some past, some past something they had done. I don't know what the box was about.

Q Can you try to recall the exact words or as best you can what he said concerning the box?

A He says, "That goddam box," or something to that effect. He was visibly annoyed and he then proceeded to get dressed.

Q Let me stop you again. When he said, "That goddam box," did he say anything concerning her? Did he said, "That goddam box and her." or anything relating to her?

A "That goddam box." And then he told his wife to go in the other room and close the door. And he said something more to the effect that he knew what he had to do.

Q He said this to you?

A Outloud. I don't know if he directed it to me, but I was in the room there and he directed it outloud.

Q What was he doing when he said he knew what he had to do?

A What was he doing? Pulling on his pants, I think.

Q He was getting dressed?

A He was in his underwear and his shorts and his T-shirt and he was putting on his underwear, his

pants and his sweater.

Q Okay. Do you know what he meant when he said what he had to do?

A I had an idea what he meant.

Q And what was that?

A I believe he meant to kill her.

Q Okay. What did he do after he got dressed?

A He said, "Let's go, go in the car," and he drove. I rode in the car, his car he had at the house.

Q What kind of a car was that, sir?

A A rented 1972 Plymouth four-door, green, black top, dark green with a black top, black interior, New York license plates, something, something Z-716, or 516.

Q How did you know it was a rented car?

A Well, because I knew his wife had rented the car previously and I had told the officers where I believe the car was rented from.

Q Okay. How did you know that? How did you know she had rented the car?

A Oh, because they told me. They told me a

few days, they had had the car for three or four weeks prior to that, the same car.

Q Had you known the Pacellis well?

A I've known him about a year and his wife about the same amount of time?

Q Did you see him frequently?

A I didn't see him too frequently, but he did get married in St. Patrick's Church back in June 6th last, and because he knew that I had some knowledge, I have a lot of knowledge of the restaurant and food business, he told me he did not have the head to arrange a wedding of the type he wanted and he asked me if I could take care of it for him, and I did.

So I took care of all, all arrangements in the church, Tavern on the Green, and the Pierre Hotel for him for his wedding.

Q Okay. What did you do? He drove the car?

A He drove the car. We drove down towards Hippopotamus, Downtown, east side. He stopped on the F.D.R. Drive about the 73rd Street exit, but he did not exit, and he got on the service road and he told me to go in and buy some cans of gas.

Q Did he stop at a gas station?

A Yeah, just away from it, so the car could not be seen.

Q Do you remember what kind of gas station?

A I believe it was a gas station, I say I believe, but I'm not sure, it's the only one about the 73rd Street exit of the F.D.R. Drive going south.

Q Did he say why he had to stop at the gas station?

A Yeah. He had to buy the gas to burn the girl.

Q. He said that?

A He said that.

Q How did he come about to say he was going to burn the girl?

A Just like I said it, just now, straight out.

Q He said he had to buy the gas to burn the girl?

A To burn the body.

Q Did he ask you to do anything?

A Yeah. He asked me to go buy the gas.

Q And is it at that point that he said, "Go

buy the gas," or, "We're going to need it," or something like that?

A Yes. I came back with a can of gas I bought and he said, "That's not enough. Get some more." I went back and bought three more.

Q When you came back with one, was it a two-gallon or one-gallon can?

A These red cans that says -- but it's a red can with a handle.

Q Small can?

A Yeah, I guess. I think we decided it was a two-gallon can. It's kind of like about like that [indicating].

Q Now, when you came back with the one and he said, "That's not enough -- "

A "Go back and get more." So I went back and bought three more.

Q Did you buy it from the same fellow?

A Yes, I did.

Q You remember what he looked like, the fellow?

A It's hard to remember. I think he was a young fellow.

Q Caucasean?

A Yeah, a white male, age 20, 25, maybe.

Q Black hair?

A It's very difficult to remember.

Q Did he have light hair or dark hair?

A I can't remember a thing about his hair, honestly.

Q Skinny, fat?

A Tall, thin I think.

Q Okay. When you got the three cans and the additional cans, you came back to the car. What did Pacelli do or say?

A He didn't say anything. He had the trunk open. He just put them in the trunk, he was standing by the trunk with the trunk open.

Q Did you help him put them in the car?

A He put the tops on real tight and he put them in the trunk.

Q What did you do after that?

A I got in the car and he drove, got off the Drive at 53rd Street. He drove across the Third Avenue, he drove up Third Avenue. He stopped between 53rd and

54th and he said, "Go out of the car, go into the club and tell her to come meet me at 54th and Lexington up by the church. Tell her to come out in ten minutes, and you stay another fifteen, twenty minutes, and then you come out on your own by yourself, and you come up to the car."

Q And what did you do?

A What did I do? I went into the Hippopotamus. I saw her there. I told her what he said about meeting him.

Q Let me stop you. When you went in, where was she?

A She was around and near the booth what I had left her.

Q With the people?

A Same group of people.

Q Okay. Now, what did you say to her?

A I said --

Q Approximately, or as best you recall.

A I said, "Vinnie is -- " roughly, I said this. "Vinnie is up at 54th and Lexington." I described the car to her and, "Wait five, ten minutes. Then go up

there."

And she was a little high at the time of drinking or something, and what -- what I said got through to her, and she then waited a few minutes and she went there.

Q Did you say anything about what you were going to do?

A No, I didn't.

Q Okay. What did you do after she left?

A I sat there a few minutes. I paid my check at this time, which she was -- I had a check there and I paid the check.

Q How much was your check, if you remember?

A About 30 to 35 dollars, I believe.

Q That was quite a bit, wasn't it?

A We -- everybody must have been drinking on my tab while I was away.

Q In other words, you picked up the tab for everybody?

A No, no. The drinks there are pretty dear. They're about two and a half dollars, about two dollars, two and a half dollars a drink, so that only represents

about, with the tax and the tip they put on there, it's about ten drinks would be $25.00.

Q And then did you leave the Hippopotamus?

A Yes, I did.

Q Okay. Incidentally, why did you tell her that she would wait a few minutes before she went out?

A That's what he told me to tell her.

Q That's what Piccelli told you to tell her?

A Exactly.

Q Did he say why?

A No. He said he wanted it done.

Q When she left the Hippopotamus, what did you do at that point?

A Myself, I walked up to 54th Street. The car was around the corner on Lexington facing south on the -- on the east side of the street.

I got in the back behind Patsy Parks and he was, Piccelli was driving. I --

Q She was in the right passenger's seat?

A I -- right. I was in the back behind her and he was driving, and he proceeded to drive.

Q Where did you go?

A He drove over, around the City a little bit and over the 59th Street bridge and then out to Queens, and he took a long slow drive that ended up out right around here.

Q All right. Out in Nassau County?

A In Nassau County, I believe.

Q What did he talk about with Patsy Parks?

A Well, I didn't talk at all. I just sat there. He spoke about this box, whatever. I still did never determine whether it was a box of money or whatever, this box and how -- let's see, what did they talk about?

That she had -- they were talking about this girl Lisa who was involved in a case with him, and the kid, fellow named Jimmy who was already doing time somewhere in Connecticut on the same case, another case before this one with him.

And they talked about how they met these people and she was getting very friendly with him and kissing him and everything, you know, as she was saying, "Oh, I would never tell on you. I would never, I would never say anything about you, you know, Vinnie,

and you and Beverly are my dearest friends," blah, blah, blah, and that type of conversation.

And then they discussed -- I'm trying to think. Oh, he asked her some leading questions so he could pick her brains, so to speak.

Q What do you mean by leading questions?

A Well, "Have you ever been arrested? Have you ever had your fingerprints taken down? Do they have pictures of you?"

And then he talked to her about sending her away somewhere and giving her, his words were, "A bunch of money," wanted to give her a bunch of money to send her away.

Q Well, how did he say that to her?

A Just like I said it to you. He said, "I want to give you a bunch of money and send you away. Where would you like to go? Is there a place special where you want to go, California? You want to go to Brazil? I mean, where do you want to go?"

Q What did she say to that, do you recall?

A "Well, I don't know. Why do I have to go [illegible]

He said, "Well, you have to go away because I'm having this case and that's why they're at your door tonight with a subpoena 'cause there's something must be cooking with my case."

And he said all these things, you know, and then he was lulling her to sleep, so to speak, with his talk about giving her a bunch of money, and he lulled me to sleep, 'cause I was sitting in the back not paying any attention, just dozing, but then I kept thinking about she kept mentioning about a gas leak in the car. And every time --

Q Who kept mentioning that?

A Patsy. Every time she said that I didn't sleep any more.

Q Well, did you smell gas in the car?

A Oh, yeah. Yeah. And then she said, -- he said, trying to think, but I'm very tired, I'm just trying to get my head together. Excuse me for a second.

They spoke about more about the same type of thing that she go away, and he had made a pre-arranged something signal with me. He said, "When I get out of the car -- " In other words, when he gets

out of the car I would take over the wheel and he would change seats with me.

Q When did he say that to you? When did he make that --

A On the way Downtown before we got to the gas station about the gas.

Q Did he say why you would change seats?

A At that time he didn't come out and say, he didn't finish his statement, but evidently that whatever -- I'm sorry, I don't smoke -- at the time he didn't say why he was going to do it, but in my mind if he -- in my mind I didn't want to believe what he was going to do at the time. That's what -- that was why he wanted to change seats.

Q Why?

A So he could either get next to her or get behind her or have his hands free from driving to kill her.

Q Did he ever say that he was going to go out to Massapequa or out to Nassau County or --

A When she was in the car?

Q No, before he was in the car did he say

where he was going to take her?

A No, he didn't, but when I first looked up at one time, I was sitting in the back, and I -- was a road I never seen before, some highway out this way, and we were pretty far out and every time it said New York City this way, he went this way, and I saw a sign that said Bethpage. I said, "Ooh, ooh, this girl is dead," you know.

Q Were you driving at that point?

A No, he was driving the whole time.

Q Now, did there come a time when he stopped the car?

A Yes. He was -- started to look for some roads.

Q And where were you at this point?

A I was wide awake at this point.

Q Were you in the vicinity of the sign that you saw in Bethpage?

A No, it was past that. It was after we got off the highway and local little roads, you know. I don't know, what -- yeah, little city streets, city streets over here.

Q You were not in New York City at the time?

A No, we were out in this, in this general area of where we are right now, I believe, Long Island.

Q Nassau County?

A This County. We went. He started to try to find some side roads to drive down and they were all black, and she got a little nervous, 'cause the road was dead black, and it rained earlier that night and there were big puddles in the street.

And she said, "You need a snorkel to go in there," or something.

And then he said, he pulled out, he said, "I'm looking for my friend's restaurant. I want to change cars." And I knew there was a story. He was just making up a story.

So then he found a phone booth. He stopped about 20 feet from the phone booth. He got out and he went over and he faked making a phone call, picked up the phone.

When he came back he said, "I'm tired, you drive." So I got out from my side in the back right, went around the back of the car, I got in the right.

From that time on I did not look to my right or behind me.

He got -- he tried to get in next to her, I think, in the front seat and she -- I think she got nervous. At the time she said, "Oh, there's not enough room. We'll be crowded."

So he got in behind her. She was facing forward in the seat. Like here's the front of the car and when he got in behind her, it was a high seat, she turned, she turned this way.

Q She turned over her left shoulder?

A More or less. She put her back to the window, to the car door.

Q To the passenger's side?

A To the car door, yes. I was driving where this gentleman's sitting, and he was -- Vinnie was sitting behind her and --

Q Now, you're in the driver's seat. She's in the passenger's seat with her back to the door facing --

A So she can watch, try to watch him in the back.

Q Pacelli's in the back?

A Definitely.

Q And he was behind you or behind her?

A He was directly behind her. It's got those tall seats.

Q When he said he was tired and he wanted you to drive, was that the pre-arranged signal you would have?

A That's what I, you know, I knew then all the talk about giving her a bunch of money and sending her away was just a lot of talk.

Q So you knew at that point he was going to kill her?

A I knew it was over for her. I knew she was dead. I did not turn my head again. I just drove the car and by the time -- by the -- I started the car, the car was in Park and put the car in Drive, and I started to go around, and just at that moment we were getting on the road there, just at that moment, I think, he came around the seat with a knife and he -- I didn't see this happen, I mean. I was in the car but I didn't watch it happen. I saw the aftermath of

what happened. He gave her one of these [indicating].

Q When you say "one of those," you mean he cut her throat?

A He cut her throat, exactly. She bent forward, which I did see her bend forward this way [witness indicating].

Q With her head down?

A Head down, trying to protect herself, put her hands up, and she's wearing a fur coat. She did sort of try to protect herself. He was in the back seat.

Q Let me stop you at this point. So that she bent forward with her chin to her chest?

A She was already mortally wounded.

Q She was already cut under her chin?

A Yes, she was.

Q On her neck?

A I didn't ever see this, but this is just what he told me what happened. I mean, I didn't -- in other words, I didn't watch this happen.

Q You didn't see that happen. And at this point you say she put both her hands up?

A Hands up and ducked her head down, tucked her head down.

Q In the vicinity of chest and chin?

A Right. And he came over the top of the seat sort of and she was struggling, and her feet came up and kicked me, and he came down with the knife and proceeded -- I thought it was punching her, but it wasn't punches, it was he proceeded to stab her in the chest area, I believe, on the side.

Q Did you see him do this?

A Yes, I did.

Q How many times did he stab her?

A A number of times. I guess half a dozen or so.

MR. SCARING: Let me just excuse me for one minute. You can relax for a few minutes.

[At 5:03 a.m. Mr. Scaring and the reporter left the room and returned at 5:08 a.m.]

BY MR. SCARING:

Q Mr. Lipsky, again getting back to the time

now when you were driving the car and when Pacelli stabbed Patsy Parks --

A Yes, sir.

Q -- in the back of the car, did he say anything before he stabbed her?

A When he re-entered the car from making the phoney fake phone call, he didn't say anything. I just drove.

Q Well, let me stop you there. What phone call was that?

A He got out to a pay phone booth and pretended to make a phone call, which was when he switched. He came back and said, "I'm tired of driving, you drive."

Q All right.

A And I got out of the car and, you know, thinking this was it, you know, he's going to kill her.

Q Now, did he say anything when he got back in the car?

A Didn't say a word.

She turned around so she could watch him, as I told you about.

Q And what did she say to him when she turned

around, if anything?

A He tried to get in the front seat, I think, next to her so it would be easier for him, have her right next to him.

I didn't watch. I was watching straight ahead. I wouldn't even watch over to the right. I didn't want to watch.

She said, "No, it's too crowded," so he didn't fight.

Q She said to him it was too crowded?

A Yeah. So he went and got in the back behind her and as I turned my head to the left, the car had to be turned this way to go back to the highway. We were on the shoulder, like. As I turned this way, that's when he stabbed her.

I was looking out this window. He stabbed her and she ducked like that.

Q Let me just stop you at this point. How long would you say he had been back in the car before he stabbed her?

A Ten seconds, fifteen seconds. In other words, it was [witness snapping fingers]. It was a

moving -- the minute he got in the car he was going to go and do it. She turned a little away from him, she turned this way.

Q Turning to the left?

A But then he -- then I don't know, I don't know exactly what position she was in when he did.

Q Let me stop you at this point now. The first time he struck her he struck her in the vicinity of the neck you indicated?

A Yes, sir.

Q Did she say anything at that point?

A Yeah, she started to yell, "Please don't hurt me, please don't hurt me. My child. I'm a mother," and that's about all she got out.

Q Did he say anything?

A He -- when she said, "Don't hurt me," he said, "What, are you kidding?" Or something to that effect, like those were his words, "What? Are you kidding?"

Q Was that the substance?

A In other words, just about like that. That's a saying of his, like -- like -- just like, "What, are

you kidding or something?" And then he proceeded to stab her more and punch her at the same time.

Q I see. How many times would you say that you heard the punching or the stabbing?

A Half a dozen that I heard.

Q What happened after that when he stopped?

A She slumped over to the right of the seat.

Q On the front seat?

A Yeah. Her feet were down below the seat.

Q. On the floor?

A Near the floor. And she was lying in the seat wrapped up in her fur coat and there was noise coming from her. I guess air or something like that, and he said, "She's dead."

And -- and then she had yanked off his glasses and he can't see without his glasses at all.

Q When did she do that?

A In the struggle. I guess, she was fighting him as he hit her, he was hitting her with his right hand had the knife in it, and I guess he was punching her with his left hand, just punching her, 'cause she was grabbing at his head as he came over the top of

the seat.

I didn't watch all this. I was next to him but I didn't sit and watch. I was driving the car and I didn't want to watch.

Q Okay. So what happened? Did he pick up his glasses?

A He couldn't see his glasses. The lenses were very thick. They fell out on the floor and he said, "I can't see. Get my glasses, get my glasses."

She was just down on a ball, like, in the corner of the seat.

Q Was she bleeding at that point?

A I couldn't see. It was dark in the car, but later showed that she had bled just, not much, a little, and she was, I believe, dead, 'cause I think she went into -- my own opinion -- she went into shock and the first time he cut her would kill anybody. I mean just that first one. But then he -- he leaned down, he said, "Get my glasses, get my glasses," and he couldn't see still, so I got it.

No, he didn't get the glasses as yet. He didn't worry about the glasses yet. I was driving

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around. He couldn't see. I was back on the road and I was trying -- I was just driving like down the road, and he was yelling, "Get the glasses, get the glasses."

So I got to a red light and I stopped at the red light, and she's down below the window level, he's in the back, and I'm picking his two lenses up off the floor with the frames and I put them in for him and I handed them to him, and he got them on and he can see again.

He then said, "Come on, find that road we were at before."

I said, "What road?"

He said, "The, you know, the one we were when we turned," this and that.

I said, "I don't know where it was."

And he said, "Find the road." And he was getting real nervous. So we drove around and he said, "Oh, this is good." And then we find a road, which was the road where the body was found, and we drove in and took a right, came up along the side, some bushes, like woods, sort of woods. I think it was a dirt road. I'm not sure. And we drove up alongside it.

And he said, "Open up the trunk and get us those cans of gas." And I didn't see. I went out on the left driver's door, I went back to the trunk. By the time I opened the trunk and reached out a can for hi, he had taken the body, just yanked it in one move. It looked like just picked it up like this and just --

Q Pulled it out of the car?

A Just picked her up, and yanked her about eight, ten feet from the car and dropped her.

Q Let me stop you at this point. Did he say why he wanted you to find that road, this spot, the one you were at?

A Yeah, because I think it was a deserted, dead, quiet place that he had seen just a few minutes earlier and he thought it would be a good spot to dump the body, pour the gas on her, because there was another open end up at the other end to get away.

Q What did you do at that point?

A I opened the trunk up and I gave him the gas cans. I was acting mostly by reflex at this time. I don't remember doing any of this, but I did. I handed him the gas cans. Then he had gloves on and

he opened up the gas cans and dumped the gas over her, which I never did look at her, I mean. He did all that.

Then he said, "I have gas all over my hands." And he said, "Do you have a match?" And I had a match. And he said, "Strike the match," and just as I struck it, the whole flames flared up, and I was just standing there watching it.

And he said, "Come on. Come on. Get in the car. Get in the car." So I got in the car. I was driving and he was still trying to fix his glasses. And we drove. We drove.

Then he took the wheel after his glasses were fixed. He took the wheel, and we drove back a long way around, the Belt Parkway, somehow, all the way back up to New Rochelle.

Q Okay. Now, you indicated before that you don't smoke, is that correct?

A That's correct.

Q All right. Where did you get the matches that you had?

A In the Hippopotamus. Instructed me to pick

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up matches in the Hippopotamus for this purpose.

Q He did tell you to do that?

A Yes, he did.

Q Incidentally, does he smoke?

A No, he doesn't. He doesn't smoke cigarettes at all.

Q Okay. So what did you do that night? You drove back to his house?

A It was early. It was early. It was still dark out. We drove back up to -- toward his house. We went the long -- long way, 'cause he got lost. Somebody gave us the wrong directions and we ended up on the Belt Parkway going through Brooklyn and then all the way.

Q Let me stop you. Did you stop and ask somebody for directions?

A A man in a gas station. I think it was a Texaco station.

Q Do you remember where?

A I don't remember the exact highway. I might -- I might remember the location if I saw it again.

Q Was it in Nassau County or was it in the City?

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A I'm not sure. It must have been Nassau County. It wasn't too far from here, I don't think. It was a ways from here, but --

Q Was it far from the area where the body was burned?

A Some miles, yeah, it was a few miles. We thought we were going the right way and he wanted to make sure. He pulled in the gas station and got out, went inside. There was a guy there.

I said, "How do you go to New York?" And he told me, and it was the wrong way or, I don't know. Anyhow, so we ended up going in back into New York and he got off, I don't know. We came up First Avenue somehow. We got back into the City, came up First Avenue and took the contents of the pocketbook and instructed me to dump them in a trash can in a Texaco gas station at 36th and First Avenue. As you go up First Avenue by the Queens Midtown Tunnel.

Q Why did he pick that gas station, do you know?

A Well, he needed gas.

Q Did he stop and get gas there?

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A Yes, he did.

Q Again, where is that gas station?

A First Avenue and about 36th. I'm not sure of the street. I think it's 36th Street. The one adjacent to the -- where the Queens Midtown Tunnel goes underground there.

Q Do you remember how he paid for the gas at the gas station?

A Just cash.

Q What about the knife? Do you know what he did with the knife?

A Yes, he had me throw it away.

Q What did he say? Did he say, "Throw the knife away?"

A He said, "I'm going to give the knife to you as soon as you get out of the car. You go up to this dock and you throw it in the water up near the house in New Rochelle," and I did so.

Q What water was that?

A I'm sorry, I didn't know the name of the water, but it's --

Q Was it in New York City?

A It was. I believe it's in New Rochelle.

Q Did you take anything out of the pocketbook?

A Well, there was a bunch of papers and everything in there. He says, "Take out the money. Don't throw the money away. Keep it." You know. I took the money. It was like $20.00. And he says, "Take all the papers and all the rest of the junk and throw it down the trash can," which I did. The pocketbook remained in the car with us until we got up to his house.

Q Okay. Again, what did you do with the pocketbook?

A The pocketbook, he told me to carry it into his house. As we went upstairs, we went back to his house, and keep it under my coat, going to throw it down the trash chute in his apartment building.

Q And did you do that?

A Yes, I did.

Q Okay. Now, what about the car? Did you do anything concerning the cleaning-up of the car?

A Yes. He had me throw the knife away first before we went back to the apartment, where his wife

and his wife's sister and his friend Abbe were there sleeping.

And we went in there and he told his wife, "Give Barry all the stuff to clean the car. We have to go clean up the car." And we drove to a place.

Q Did he say why he had to clean the car?

A He didn't come out in front of them and tell them why, but I --

Q In front of who now?

A His wife, his wife's sister and his friend named Abbe. I suppose not suppose, I would guess very assuredly that they knew what had happened, but there was no talk about it.

Q Who was his friend now, Abbe and who else?

A I believe Abbe's name is Abbe Perez.

Q The other one?

A Barbara is Juleba, J-A-L-A-B-A, his wife's sister, Vinnie's wife's sister.

Q And they gave you these cleaning fluids?

A Some paper towels, a roll of paper towels, and all that cleaning business, all the cleaning equipment.

Q Did they help you clean the car?

A No, not at that time. He went out and as Vinnie had me, made me wear his gloves that he was wearing at the time he killed Patsy. He was wearing his gloves. He said to me, "Take the rags and get the blood."

There was some pool of blood on the right-hand side of the car down the rug. He made me clean up the blood and he was throwing the gas cans in the water at this spot where we went to throw everything in the water.

Q So that you went back to his house to get the cleaning stuff?

A Cleaning equipment and then left again.

Q And you went to the spot where you threw the cans, gas cans in the water?

A Gas cans in the water. The knife was already thrown away before we went home the first time.

Q Was that in the same place that you threw the gas cans?

A Different place.

Q How far was the place that you threw the

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gas cans from his house?

A Oh, just a few blocks, five to six, eight blocks, something like that. We drove there.

Q Do you know what body of water that is?

A I don't know the name of the body of water. It's on the right-hand side of Pelham Road as you go north.

Q What did you do with the gloves?

A He told me to rip them up, which I tried to do as best I could, 'cause he said there was blood on them somewhere. I didn't see it, but it ripped up, ripped up the gloves. Then --

Q What did you do with them after you ripped them up?

A He had me throw them in the trash can in that neighborhood and he drove around.

Q When you say "in the neighborhood," you mean just --

A Any trash can out on the corner at this time.

Q Did you do that?

A Yeah, I did that, and we stopped at another trash can where I shoved the paper, rags with the blood

all over them down into the trash can.

Q That you had cleaned the car with?

A Exactly.

Q Did you do anything else concerning the car?

A No. We took it back and we went upstairs. I was very tired. I went and laid down, tried to go to sleep and he went to sleep.

Q You went to sleep in his house?

A Yeah. It was about 7:00 in the morning, and his wife and his wife's sister got up the next morning to take the car to go to -- to go to shopping or something.

And they say that the -- in the light of day there was more blood than they had figured on and they went and took the equipment out and they cleaned the car again.

Q Who did?

A Beverly and Barbara, the wife and the wife's sister.

Q Did they say anything about the blood?

A They came and they said, they had cleaned the car again, 'cause there was a lot of blood all over

there and we had not gotten it, or I had not gotten it.

Q Who did they say that to?

A To myself and Vinnie.

Q Did you do anything else concerning the car or any of the other items?

A Not at that time. There were no other items left. I mean, the gloves were gone, the rags were gone, the car was supposedly clean. The knife, the murder weapon, was gone. The gloves were torn up. The pocket book was thrown away, the contents thrown away.

When we woke up we were going to return the car, and they did so, and we went down into Westchester Avenue in the Bronx, two cars. I rode with Beverly. She was driving the car that we had had that night before and I was sitting with her and Vinnie and Barbara and Abbe were driving ahead of us in a Thunderbird, Abbe's car.

Q Did you return the car?

A Yeah, Beverly returned it. I didn't return it, it wasn't mine to return.

Beverly returned it, went inside and paid the money at the Econo-Car place in Westchester Avenue.

Q Okay.

A And checked the car back in.

Q Mr. Lipsky, why did you do all this on his behalf,on Pacelli's behalf?

A Because I didn't really believe that he was going to kill this girl. I didn't go up and take him out of his house in the knowledge that he was going to kill this girl.

Q Well, let me stop you there. Why did you go up to his house at that hour of the morning, based on the conversation that you had?

A Because she told me she needed to see him and I guess I wasn't thinking. I know I wasn't thinking clearly. And to go up to his house, but she told me it had to do with his case and it was a subpoena and she thought he should know about it, and nobody knew how to reach him, and so --

Q Well, didn't you have the telephone number?

A He doesn't have a phone.

Q Couldn't you tell her where he lived?

A No. He was very particular that nobody should know where he lived.

Q But why, because of this particular girl, why would you go up at that particular time of night? Why didn't you tell her to wait till the morning?

A Don't know exactly why. I didn't tell her to wait till the morning, but I knew that there had - I had heard some glimpses of conversations in the past that this girl had been to the Grand Jury about Pacelli and it was something involving a box of money or a box of something else, and she had some certain knowledge that he would want and he was having some kind of case, he had some type of case, criminal case coming up.

Q Where had you heard all this information?

A Just in idle gossip in the last, you know --

Q What was your relationship to Pacelli that you felt that you had to get involved in something like this?

A I met him through his wife, who I had met through his girl, Margie Jacklone, and then he got married, he was getting married in St. Patrick's Cathedral and I was living Downtown at the time with this friend of mine, Beni Febre, and he said to me he

doesn't have the head to conduct a wedding of the type he wants to throw for her people. He made the wedding, not -- not his wife's people, out of Detroit.

He -- he made the wedding. He said, "I want to have a real nice wedding and I know you know how to do this type of thing." This was an original come-together. This was the -- this was the original way I began to -- to know him a little bit.

Q Well, what other kind of relationship did you have other than this kind of business relationship?

A I used to go out at night at different times and I would go out and I'd see him out in the discotheques and the place Directoire, where people used to go, you know, dance and drink, and I saw him around and he was a very quiet, mild-mannered guy, never bothered anybody, never, quiet, sat still, and we used to just speak.

Q Mr. Lapsky, Mr. Lipsky, I'm sorry. Quite candidly, you've told us very specifically that when you spoke with Pacelli at his house concerning Patsy Parks, he indicated to you at that time, and you accepted it and you believed it, that he was going to

kill the girl, that he indicated he was going to kill Patsy Parks.

A Yes, sir.

Q That he then stopped the car and got gasoline for the purposes of doing away with the body, and he set forth of plan of action where you were to participate in getting her out to the car and participate in everything, other than the actual stabbing.

A That he was going to do it, right.

Q Of the woman. Now, what kind of a relationship did you have with this man that you would get yourself involved in that kind of a situation?

A I just -- I didn't have any, really. I guess I had a close relationship with him but it was born by his -- by his, you know, by his way of thinking, I guess. He thought I could -- he could trust me.

I had had some trouble in Florida in the past with a case involving stocks and bonds, which he knew some of the participants, and I had gotten convicted of conspiracy and got a -- my sentence was three years' probation, and he knew about that, and he had heard about that through some people down in

Florida and through myself.

And mainly it was the wedding that I got friendly with him about.

Q Now, my point is, Mr. Lipsky, you knew that he was going to commit a murder and he was asking you to participate

A When I was in the car he was talking to the girl about -- about sending her away and he lulled me to sleep, and I really thought at the time that he -- even after he bought the gas, I didn't -- I thought he was going to, you know, talk to her.

I thought he was going to talk to her, and then if he didn't, you know, I didn't know whether he was going to go through with this or not. He bought the gas but he didn't have to go and do it. And then he went ahead and was talking to her about -- about going away and give her a bunch of money to go away with and -- and then he just -- he was just lulling me to sleep also, 'cause he didn't have any --

Q Mr. Lipsky, when he got out of the car, when he gave you the ultimate signal that you were to drive the car, at that point there was no doubt

in your mind that he was to kill her?

A No, that's why I didn't watch.

Q But at that point you're still talking about the fact that he was going to commit a murder. Now, your relationship does not seem to be that type that you would want to get involved in such a situation.

A I -- my wrong move was going up to his house in the first place that night.

Q Were you in any way involved in the criminal prosecution?

A No, sir.

Q Were you in any way involved in the investigation or the matter which he was indicted for?

A Not one bit whatsoever.

Q Did you know anything about it?

A Just very, very sketchy.

Q Well, did you have any criminal activity or any participation with him in any criminal activity other than this marriage?

A No, I did not.

Q With respect to the incident that you had in Florida with the stolen stocks and bonds?

A Yes, sir.

Q Was he involved in that at all?

A No, I did not know this man at that time.

Q Did he have anything, did he threaten you at any time, or did he have anything over you?

A No, he never threatened me. Very mild-mannered, very quiet.

Q Did you have any conversations with Vincent since this incident took place? I am talking about Pacelli.

A Since it took place?

Q Yes.

A Well, he went on trial on the Tuesday following this Thursday night, Friday. He did call me, my apartment.

Q Did he say anything about this case, about the Patsy Parks --

A Yeah, he did say to me, as in the statement here, that he was happy that he did what he did to Patsy Parks because he was -- he didn't know at the time that he did it that his trial was going to start Tuesday and she would have been a key witness against

him.

And his trial did start Tuesday and his bond, as you know, was remanded on Thursday night 'cause there was a holiday, a Court holiday on Friday, and they -- that's when they divulged with the jury out of the courtroom, at the end of the Court day, as the Judge was leaving the bench.

Q Okay. With respect to your participation, did he say anything that you should do or not to do, or which you shouldn't do concerning what had happened?

A Yes. He said, "Just never speak of this to anybody." He didn't threaten me. He just said, 'Never speak of this to anybody, just forget all about it like it never happened. Never go into the Hippopotamus again.'

And then he went on trial and he didn't have any more time to talk to me about much.

Q I just have a few more questions that I want to ask you.

A Yes, sir.

Q Firstly, did you receive any money from anybody to go down to Florida?

A Yes, I did.

Q And can you tell me about that?

A I received $1,000.00 to go down to Florida.

Q And who did you receive it from and tell us the circumstances?

A It was up -- I was called to come up to Pacelli's aunt's house and I went up there, and up there it was Beverly, his wife, and this fellow Abbe -- Perez, I believe. He had -- they had decided I should go to Florida, get permission from Mr. Cannon, my probation officer. I should go to Florida and they gave me a thousand dollars to do so.

Q All right. Now, who said it to you and who gave you the thousand dollars?

A Well, I -- Abbe said, "Go to Florida," and he gave me the thousand dollars.

Q Did he give you any instructions?

A More or less he wanted me to go to New Jersey first, not Florida. And then he says, then he changes his mind.

He said, "Get permission from your probation man that you're going to go to Florida," probation

officer, "and then don't talk to anybody down there, don't go out anywhere, just go down there if we want you, and come back by the time your probation, your date."

Q Now, what date was that that you ~~went down there? I'm sorry. That was~~ had the conversation with with Abbe.

A This was on the Thursday night before the Friday night that U left.

Q And when did you leave, when day?

A On the 11th, I think it was, February.

Q So it was the following week then?

A The following, yes.

Q Incidentally, what's the address of that house where this transaction took place with the thousand dollars?

A Let's see. He gave me the money at 422, 422 East 118th Street.

Q And that's whose house?

A That's Frank and Annette Bassey, that's Pacelli's aunt and uncle.

Q Okay. And who gave you the money now?

A Abbe gave me the money.

stayed over my friend's place. My friend and his girl was in the Bahamas so we all stayed there, it was very cold, and we got to talking and I don't know why but I told her, so like I'm telling you.

Q Okay. Did you tell anybody else?

A My friend Alan Harris.

Q Where does he live in Florida?

A Yeah. He lives with his girlfriend Diane Caine, C-A-I-N-E, at the same place where I told Margie Jacklone, at her residence, at apartment at 1065 97th Street, Miami Beach, Bay Harbor Isle, Miami Beach, Florida.

Q Did you tell Alan Harris everything, also?

A Same as I told Margie Jacklone.

Q Was there anybody present when you told Alan Harris?

A No.

Q Anybody else that you told?

A No. No, sir.

MR. SCARING: All right. Thank you very much, Mr. Lipsky.

THE WITNESS: Sure.

MR. SCARING: That's all I have.

[Statement concluded at 5:38 a.m.]

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Q And did anybody else say anything to you when he gave you the money?

A No. Just I should go down there and --

Q As you recited?

A Exactly. "I will, yes." true.

Q When you were down in Florida, did you tell anybody about what had happened up here concerning the murder?

A Not at first I didn't, but then couldn't keep it inside, and Margie Jacklone came down there and she knew, had gotten bad feelings about this happening up here in New York and she wanted to get out. She was scared to death for herself. She thought they would come and kill her next.

Q Did she know that Patsy Parks had been found dead?

A She knew, yeah. She had heard that Patsy had been found dead and when we got down Florida, she got down to Florida, she was going to stay in the Fountainbleu, but her reservation wasn't until Monday and she came in Saturday night to get away from the storm, and I let her stay over with her son. She

MR. EDWARDS: Mr. Lipsky, please.

B A R R Y G L E N L I P S K Y, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q Mr. Lipsky, will you please remember that everyone here has to hear your testimony and, therefore, would you please speak in a sufficiently loud voice and also slowly enough so that you can be clearly heard.

Mr. Lipsky, up until around 1970 where were you living?

A In Miami Beach, Florida.

Q And in around 1970 did you come to New York for a few months?

A Yes, I did.

Q And did you return to Florida around the end of 1970?

A Yes, I did.

Q Directing your attention to early 1971, did you once again come to New York?

A Yes, I did.

Q Mr. Lipsky, do you know a man by the name of Vincent Pacelli, Jr.?

A Yes, I do.

Q Do you see him here in the courtroom?

A Yes, I do.

Q Would you point him out please?

A The third person from the left at the counsel table.

MR. EDWARDS: May the record reflect, your Honor, that the witness has identified the defendant.

Q Did there come a time in 1971, Mr. Lipsky, when you became employed by Mr. Pacelli?

A Yes, sir.

Q Around when was this to the best of your memory?

A Shortly after Easter 1971.

Q What was the nature of the business in which you were employed by Pacelli?

A The narcotics business.

Q For how long did you continue in that type of employment with Mr. Pacelli?

A Approximately ten months.

Q During this time and in this business did Mr. Pacelli have any partners?

MR. DUKE: Objection.

THE COURT: Overruled.

A Yes, sir.

Q And who were his partners?

A Albert Perez and Albert Bracer.

Q Mr. Lipsky, in your work from which of these partners, if any, did you receive your orders?

A Pacelli.

Q And who paid them?

A Pacelli most of the time.

Q Mr. Lipsky, what is your best estimate of the amount of income you received from Pacelli during the ten months you have referred to?

A The best estimate of my income during those ten months is between five and ten thousand dollars, but I cannot be exactly sure of the figure.

Q During this period of time where were you living?

A At 1420 Third Avenue, New York City.

Q Who paid the rent?

A I did.

Q And where did you obtain the funds?

A From the money that I was paid by Pacelli.

Q Were you paid so much a week or so much a month, or was it more sporadic?

A It was a sporadic type pay arrangement.

Q Mr. Lipsky, I am directing your attention to the early evening of February 3, 1972. Would you tell us

where you had dinner that evening?

A Billy's Restaurant.

Q Was anyone having dinner with you?

A Yes.

Q Who was this?

A Margie Jacklone.

Q Who was she?

A She was a friend of mine.

Q Incidentally, did you have any business arrangement with her other than her being a friend of yours?

A Yes.

Q Did this involve you and she in sort of a cocaine business of your own on the side?

A It did.

Q Mr. Lipsky, after you and she had dinner where, if anywhere, did you go?

A We went to the movies.

Q Do you remember where?

A Yes. I believe it was the Beekman Theatre on 66th Street and Second Avenue, to the best of my memory.

Q How did you travel from the restaurant to the theatre that evening?

A Taxicab.

Q Did you at that time have a car of your own?

A I did not.

Q Did you ever rent a car of your own?

A I did not.

Q After you went to the movies could you say, as best you can, what time is it you came out of the movie?

A To the best of my memory around 11:30, a quarter of 12, around there.

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Q When you came out of there, where did you go?

A To the Hippopotamus discotheque.

Q Did Margie Jacklone accompany you to the Hippopotamus?

A She did.

Q And how did you travel from the theatre to the Hippopotamus?

A Taxicab.

Q Around when would you say you arrived at the Hippopotamus?

A Around 12 o'clock to the best of my memory.

Q Could it have been earlier?

A Yes, it could have been.

Q Could it have been a little later?

A Yes.

Q When you arrived there, what did you and she do?

A Sat down at a table with some other people.

lzh 2 Lipsky-direct

Q Do you know a man named Benny Febre?

A I do.

Q Did you know him at that time?

A Yes, I did.

Q Did you see him that evening?

A Yes.

Q Where did you first see him?

A Sitting at the table with Margie Jacklone and I sat down.

Q Did you know as of that time a young lady named Patsy Parks?

A I knew her.

Q Was she a friend of yours?

A No.

Q Was she an enemy of yours?

A No.

Q Did you know her well?

A Not very well. Just casually.

Q Had you planned or expected to see her that evening?

A I had not. I did not.

Q Had you ever been in Patsy Parks' apartment?

A No.

Q Had she ever been in yours?

A No.

Q As of that time, February 3rd, did you know where Patsy Parks lived?

A No.

Q To the best of your memory, had you ever telephoned Patsy Parks on any occasions?

A No.

Q Had you ever had any intimate relations with Patsy Parks?

A No.

Q To the best of your memory -- well, let me ask you this: Did you see Patsy Parks that night at the Hippopotamus?

A I did.

Q And to the best of your memory around what time was it that you first saw her at the Hippopotamus on that evening?

A To the best of my memory it was somewhere around 12:30, but I can't be exactly sure of the time.

Q Did you see her enter the Hippopotamus?

A Yes, I did.

Q Was she alone or was she with someone?

A She was alone. I believe she was alone.

Q What if anything did you observe her do when she came into the Hippopotamus?

A She went directly over to where Benny Febre was sitting and sat down next to him.

Q Did you see them talking?

A Yes.

Q Did you hear anything they said?

A No.

Q Well, now, what is the next thing you saw either of them do, if anything?

A The two of them got up and moved to another table which was empty and they sat down and were speaking to each other, in each other's ears.

Q Could you hear them at that time?

A No. No, sir.

Q And what is the next thing you saw either of them do?

A Febre got up from that table, Patsy Parks remained sitting at the table and Febre came over to me andsaid, "This girl Patsy wants to talk to you."

Q When he said -- I'm sorry, did he say anything further?

A He said "She wants to talk to you. She says it's important. Go talk to her."

Q Did he say anything further that you remember?

A Yes. He said "She wants to talk to you, it's

important, go and talk to her," and I said something back to him.

Q All right, what did you say to him, to your memory?

A I said, "Well, I don't have anything to say to her. I have nothing to say to her," whereupon he then said to me, "Come on, come on."

He took me by the arm and said, "Go talk to her. She says it's important."

Q And did you talk to her?

A I went over and I sat down at the table with she and I and she spoke to me.

Q To your best memory now, what did she then say to you and what did you then say to her, if anything?

A She said to me, "Barry, I've got to talk to Vinny."

I said, "Why?"

She said, "Two people came to my door and with a paper with my name on it and it's a paper, has something to do with a case, I believe. And I have to talk to him tonight, it's urgent. I need him to tell me what to do."

Q What if anything did you reply to her?

A I said, "Listen, it's very noisy in here. The music is very loud. Let's go out in the hall where the phone booths are and we can talk out there."

Q Is that discotheque in fact a very noisy place?

A It was, yes. It was very noisy.

Q Did the two of you move out into the hall?

A We did.

Q Did you have a conversation with her there?

A Yes.

Q To your memory what did she say to you and what did you then say to her?

A She said to me, "I want to call up Vinny, I've got to talk to him. I was in my apartment and two men came to the door and somebody answered the door and saw that my name and Vinny's name was on a piece of paper and I need to speak to him tonight, it's urgent and will you call him up for me."

Q Incidentally, did you know as of that time a person named Patsy Quinn?

A I do not.

Q As of that time had you ever heard of her?

A No.

Q Now, Mr. Lipsky, when Patsy Parks told you she wanted you to call Pacelli concerning this paper, do you recall what you said to her in reply?

A I said, "Well, he doesn't have a phone, Patsy. Tell me what it is you want and I'll see him and I'll tell him

tomorrow and he can come and talk to you about it tomorrow."

Q At that time when you told him that Pacelli had no phone, do you know whether he did have a phone or not?

A Yes.

Q Did he have a phone?

A No.

Q Where was he living at the time?

A At 501 Pelham Road, apartment 2F, New Rochelle, New York.

Q And if you know, under what name was he listed in that apartment?

A Brant, I think.

Q That is B-r-a-n--- how --

A B-r-a-n-t, I believe.

Q So what did you say to Patsy Parks concerning Pacelli having no telephone?

A I said that he had no telephone. I would tell him what she told me, I said to her, "Patsy, tell me what you want him to know or tell me and he will come and talk to you tomorrow because he doesn't have a phone."

Q What did she say, if anything?

A She said, "No, no. It's urgent. I must speak to him tonight. I've got to speak to him tonight. Go and get him."

So I then again tried to dissuade, persuade her

that I could tell him tomorrow and he would come see her tomorrow and she was adamant. She said, "No, no, you have to go get him. I need to speak to him tonight."

So I said, "Oh, all right."

Q Did you leave the Hippopotamus?

A Yes, I did.

Q Before you left the Hippopotamus, did you have a conversation with anyone else?

A Yes.

Q With whom?

A With Margie Jacklone and Patsy Parks.

Q Well, what did you say, if anything, to Margie Jacklone?

A I said, "I've got to go somewhere out. If the club closes, the Hippopotamus closes before I get back, have Patsy go over to your apartment would you."

Q Did you tell her why?

A And I would come and meet the two of them over there.

Q Did Margie Jacklone say anything in reply that you can recall?

A She nodded her head, I believe, or she said she would do it.

Q Well then, did you then leave the Hippopotamus?

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A I did.

Q Where did you go?

A I went out to the corner of 54th Street and Third Avenue and got a taxicab.

Q As best you can, around what time do you think you left the Hoppopotamus to find a taxicab?

A To the best of my memory, I think it was around 1:30, but I can't be exactly sure of the time.

Q And did you find a cab?

A Yes, I did.

Q Now, what is your present memory, if any, as to the kind of taxicab you found?

A It was a yellow painted cab. One of those big round top cabs with -- it said taxi on the top and the yellow sign on the top and it had two jump seats. They pulled up out of the floor in the passenger, in the back passenger area. And it had a partition between the passenger area and the driver area.

Q Did this cab take you to New Rochelle?

A It did.

Q During the trip do you recall, did the cab driver have the meter on or did he have it off?

A My best memory, he had it off.

Q And did you have a conversation with him of any kind

concerning how the cab was going to be paid paid?

A Yes. He said it was outside the city limits so that was a flat rate, so much money. He named a figure. We haggled over the figure a little bit and I forget what he said, $12 or $14, I don't remember exactly, and I said all right, whatever it is, just go ahead. Drive.

Q How long did it take you, as best you can estimate, to reach New Rochelle?

A The best of my memory, it took about 25 to 35 minutes. I can't recall, exactly.

Q And where in New Rochelle did you have this cab take you?

A On Pelham Road in New Rochelle, just next to a Mobil gas station that was closed. I had him stop there.

Q Where was this with relation to Pacelli's apartment house?

A Across the street. Just sort of on a diagonal across the street from the rear of Pacelli's apartment house.

Q From the rear of the apartment house?

A Yes.

Q Did you approach the apartment house?

A Yes.

Q Did you approach the front or did you approach the rear?

A I approached the rear.

Q What did you do when you arrived there?

A I climbed up sort of a step through a parking lot and was on some grass area under a window, and I picked up some pebbles and tossed the pebbles up against a

window which was, as I recall, the bedroom window, a second-floor bedroom window.

Q When you say "bedroom window," you mean of Pacelli's apartment?

A That is correct.

Q What was it, if anything, that happened when the pebbles hit the window?

A A few seconds thereafter, the curtains were pulled back and there were two women looking out.

Q Can you tell us who they were?

A Yes. Beverly Pacelli and Ida Bracer.

Q Who is Beverly Pacelli?

A Pacelli's wife.

Q Do you know her maiden name?

A Jalaba.

Q Who is Ida Bracer?

A The wife of Al Bracer.

Q And Al Bracer is the gentleman you mentioned earlier as being one of Pacelli's narcotics partners?

A That's right.

Q What happened after they came to the window?

A I made a motion of this type, that I wanted to come in, and I went around to the front of the apartment and I rang the buzzer, and from the inside the buzzer was

rung by someone and the door opened and I went upstairs.

Q Did you enter the apartment?

A Yes, I did.

Q Who was there in the room that you entered?

A Pacelli, Al Bracer, Pacelli's wife, Al Bracer's wife, and Barbara Jalaba.

Q Who is the last person you mentioned?

A Barbara Jalaba is the sister of Beverly Pacelli.

Q Well now, when you entered the room with those people in it, did you and Pacelli have a conversation?

A Yes.

Q I want your best memory on everything you can presently remember on what it is that you then said to Pacelli and what Pacelli then said to you.

A I said to Pacelli, "The girl Patty is down at the Hippo and she wants to see you. Some people came to her apartment and they had a paper with your name on it and her name on it, and she is down there and she wants to see you and have you tell her what she is supposed to do."

And Pacelli said to me, "It's that box. It's that God-damned box. She has been to the grand jury and she ratted me out." And then he made a motion, he went like

this. "I know what I have to do."

And at that point Al Bracer took the three women and told them to go into the bedroom.

Q Well now, to the best of your memory, did Al Bracer send the women into the bedroom before or after Pacelli hit his hand and said, "I know what I have to do"?

A To my best memory, he may have sent them in the bedroom before, but I'm not absolutely sure.

Q Now, after Pacelli hit his hand and said that he knew what he had to do, what is the next thing he said, if anything?

A He said to Al Bracer, "Do you want to go with me?"

Q What did Al Bracer say?

A He said, "No."

Q And then what did Pacelli say?

A He said to me, "Barry, do you want to go with me?"

Q What did you say?

A I said, "Yes."

Q And then what is it that Pacelli did?

A He proceeded to get dressed.

Q And when he did, what did you and he do?

A We left the apartment together, he and I.

Q When you left the apartment, did you leave in a car?

A We did.

Q And what is this car that you left in?

A It was a 1972 Plymouth Fury 3 model, dark green, with New York plates, black vinyl top and black interior, a four-door model.

Q Whose car was this?

A Pacelli's car.

Q Well now, did he own it or did he rent it or did he obtain it in some other way?

A It was a rented car.

Q Do you know of your own knowledge how long he had this rented car?

A The best of my memory, he had it a couple of months.

Q Had you been in it before?

A Yes, I had.

Q With Pacelli?

A Yes.

Q Do you remember anything concerning the license plate number on the car?

A It was New York plates. I believe there was a Z as one of the letters, and the last three numbers were

either 716 or 617, to the best of my memory.

Q When you and he got into the car, who was driving?

A Pacelli was.

Q And where did you and he proceed to in this car?

A Down the Hutchinson River Parkway and toward New York City.

Q Did you halt anywhere along the way?

A We did.

Q Where?

A At a gas station on the FDR Drive southbound, and he pulled up on the service road out of sight of the gas station.

Q Before he halted the car there, did he tell you anything?

A Yes.

Q What did he say to you as you remember it?

A He said, "Go into the gas station and buy a couple of gallons of gas and then come back to the car." And he gave me a $10 bill for this, to buy the gas with.

Q Did he tell you anything else concerning the gasoline?

A Yes.

Q What did he say?

A He said he needed the gasoline to burn up her body.

Q After he told you this and halted the car --

MR. EDWARDS: Pardon me. Withdrawn.

Q Did you say anything to Pacelli to discourage him from obtaining this gasoline?

A I did not.

Q When he told you this, what did you do?

A I went into the gas station and --

Q Did you see anybody there?

A Yes. A young attendant, a man.

Q Did you purchase any gasoline?

A Yes.

Q Do you remember at present how much?

A My best memory, I bought two one-gallon cans of gasoline, and the man, the attendant pumped the gas into the two cans. I paid him for them and I walked back to the car.

Q Where was Pacelli at this time?

A Down by the Plymouth, down on the service road south of the gas station out of sight of the station.

Q This Plymouth was the same car that you and he took from his apartment?

A That's correct.

Q When you arrived back at the car, did you have another conversation with Pacelli?

A Yes.

Q And what did he then say to you?

A He said --

Q Which you remember.

A Which I remember?

Q Yes.

A He said to me, "No, that's not enough. Go back and get more."

Q What did you then do?

A I went back to the gas station and I bought two more gallons of gas in the same type cans and gave it -- and paid the man and took the cans and walked back to where Pacelli was standing next to the trunk of the car.

Q While this was happening, did you have any conversation with the man in the gas station?

A I believe I did.

Q Do you remember what it was?

A Yes. He asked me, "What happened to your car?"

And I said, "Well, we just ran out of gas down the drive a little bit."

This is the best I can recall.

He said, "Can I help you with a car, or come down

and fill up your tank or something?"

I said, "No, no, this will be fine. I'll take care of it. Thank you."

Q Did you pay for this gasoline by check or by cash or how?

A Cash.

Q When you returned to the car with this second load, what then did you do with the gasoline?

A Pacelli had the trunk open and we put the second two cans in with the first two cans, made sure the tops were on tight, and slammed the trunk of the car. And we got back in the car.

Q And then where to?

A He drove down the Drive and got off at the 53rd Street exit and drover over towards 54th Street and Third Avenue.

Q While you were driving along, did you have any further conversation with him?

A Yes.

Q To your memory now, what did he say to you and what did you say to him?

A He said to me, "You go into the club" --meaning the Hippopotamus -- "and you get Patsy and tell her where I will be parked, up by 54th Street and Lexington

Avenue by the church. And you tell her to wait ten minutes and then come out and come to the car. Tell her what the car looks like, and I will be here."

Q Was there any conversation in the car concerning anything that would happen in the car after Patsy Parks came?

A Yes.

Q What do you remember being said?

A Pacelli said to me, "Later on I am going to pretend to make a phone call, and when I do this, I will get out and pretend to make this phone call. You will know then that I want you to go behind the wheel and drive the car. That will be the signal for us to switch drivers."

Q Is that all he said concerning a signal or did he say something else concerning a signal?

A He said it would be a phony phone call. He would pretend to make a phone call and he would pretend to make a phone call and I would -- he would then come back to the car and I would drive and I would take over the driving of the car.

Q Did he say what the purpose of the signal was? The purpose of the phony phone call.

A To the best of my memory, I am not sure. I think he said that is when he was going to do whatever he was going to do.

Q When he told you to return to the Hippopotamus to give this information to Patsy Parks as to where he was parked, and so forth, did he tell you to do anything else in the Hippopotamus when you returned there?

A Yes.

Q What did he tell you to do?

A Pick up some matches.

Q As of that time, were you a smoker?

A No, sir.

Q Did you carry matches?

A I did not.

Q Was Pacelli a smoker?

A No, sir.

Q Did he carry matches, to your knowledge?

A Not to my knowledge.

Q Did you return to the Hippopotamus?

A I did.

Q What is your estimate as to how much time elapsed between the time you left the Hippopotamus to travel up

to Pacelli's house and the time that you arrived once again in the Hippopotamus?

A To the best of my memory at this time, between an hour and an hour and a half, an hour and a half at the outside, to the best of my memory now.

Q And around what time is it that you think you returned to the inside of the Hippopotamus?

A Around 2:00 o'clock, 2:00 to 2:30, to the best of my memory.

Q Could it have been later?

A Yes, it could have been.

Q Could it have been earlier?

A Yes, sir.

Q When you returned to the Hippopotamus, did you find Patsy Parks?

A I did.

Q Did you have a conversation with her?

A I did.

Q And to your memory, what did you say to her and what did she say to you?

A I sat down next to where she was sitting and I said, "Patsy, Vinny is in his car," and I described the car to her, the Plymouth, "Up at 54th Street and Lexington Avenue by the church. Wait a few minutes and go up

and get in the car. Go up and meet him."

Q What did she do?

A She sat where she was for a few minutes, and then I remember her getting up, and I think I recall her saying "good-bye" to somebody, and taking her coat and leaving the doorway of the club, the inside doorway.

Q Do you remember who she was sitting with at that time?

A When I spoke to her she was sitting at a table with a man I knew, named Matthew, and some other people that I don't recall.

Q Do you know what Matthew's name actually is?

A I think his name is Martin Benkovich.

Q Were there a number of people there at the Hippopotamus that evening that you knew?

A Yes, sir.

Q Is it fair to say that you went there quite often?

A Quite often.

Q And that there were a number of what you might call regulars there?

A That is correct.

Q These were people whom you knew?

A That is correct.

Q Who were some of these people?

A Margie Jacklone, Patsy Parks, Benny Febre, Matthew.

Q Was there a man named Conti there that night?

A Yes, he was.

Q Was he there often?

A On and off, not that often. He was there sometimes, but he didn't normally hang out there.

Q Did he knoew these so-called regulars?

A Yes, he knew Febre and Margie Jacklone.

Q What is Conti's first name, if you know?

A Mickey.

Q You said Patsy Parks was there for a few minutes talking to somebody and then she left; is that correct?

A To my best memory now, she leaned over and said "good-bye" to someone and then she left. She stayed the ten minutes that I instructed her to stay.

Q Were you able to tell, as of the time she was leaving the Hippopotamus whether she was to any degree intoxicated?

A When she left the Hippopotamus?

Q Yes.

A No, I wasn't able to tell at that time.

Q As of that time, did she seem perfectly in

control of herself, as far as you could tell?

A She did. That is, as far as I could tell.

Q Did you say anything to her to in any way discourage her from meeting Pacelli that night?

A I did not.

Q Did you do anything to attempt to prevent her from meeting Pacelli that night?

A I did not.

Q Did you tell her anything concerning the fact that you and Pacelli had been up purchasing gasoline?

A I did not.

Q After she left the Hippopotamus, what did you do?

A I sat down at the table where I originally was sitting, the beginning of the vening, across from Benny Febre, and there were some other people still sitting at the table; some of the original group had left and some other people sat down.

Q Do you happen to remember who some of these other people were who were still sitting there?

A I think Margie Jacklone was still sitting there or bouncing around the Hippopotamus somewhere. I am not sure if a man named Aaron Shaw and a girl named Tony Star were sitting there, and there was a man named Carl

Schlossberg. He was there earlier, I believe. I don't remember exactly if he was there when I came back. And there was a man named Jay Kaufman and his wife were there at one point in the evening. I don't remember if they were there when I returned.

Q How long did you remain in the Hippopotamus after Patsy Parks left?

A Approximately ten minutes.

Q Then what did you do?

A I had asked the waitress for my check. I had a check there, and I paid it, and I got up and I left.

Q As you were leaving,did you have a conversation with this man, Mickey Conti?

A I believe I had a conversation with him.

Q I am not asking you what was said. I am simply asking if you remember talking to him as you left.

A The best way I can explain that, I believe I had a conversation with him either when I left to go and get in the car with Pacelli and Patsy Parks, or when I first left to get in the cab. I can't be sure of when I had this conversation with him.

Q After you left the second time, where did you take yourself?

A I went up to 54th Street and Lexington Avenue and

got into the car with Patsy Parks and Pacelli in it.

Q Who was in front and who was in the rear?

A Pacelli was behind the driver's wheel and Patsy was sitting in the right seat, the front, and I got in behind Patsy, the back seat.

Q Then what happened?

A Pacelli proceeded to drive away.

Q Where to?

A He drove over the 59th Street Bridge and out through a section of Queens, I believe.

Q As the car was driving along, could you hear any conversation between Pacelli and Patsy Parks?

A Yes.

Q Were you able to tell at this time in the car whether she was to any degree intoxicated?

A She seemed to be -- to have had a few drinks, but she didn't seem totally drunk. She seemed a little bit high.

Q When the car was driving along and they were talking, I want you to tell us, as to your memory, everything that Pacelli was sasying to her and everything that she was saying in reply.

A As I recall, Pacelli said to her -- I don't remember the order or the sequence of what was said first,

but he was telling her -- she said something about the people coming to her house with a subpeona or a piece of paper or subpoena. I forget what word was mentioned.

He said, "I think that has something to do with a case of mine which may be coming up soon, and I think it's about that box." He mentioned something about a box.

Q Were there any names that they mentioned in the conversation?

A Yes.

Q What names do you remember them mentioning then?

A Elisa Possas and Jimmy Pappadokus.

Q Aside from saying that the case was coming up and that something was said concerning the box, what else do you remember Pacelli saying to her and she saying to him?

A Pacelli said to Patsy, "Listen, I got this case coming up, I think. I have got a bunch of money with me and we are going to drive out to the airport and I will give you a bunch of money and you go away. Where do you want to go? Do you want to go to South America? Do you want to go to Brazil or do you want to go to California? Because you have to go away now for awhile and I will let you know when it's all right to come back."

Q And was she saying anything in reply to this?

A Yes. She said, "Well, Vinny, I have got this job and my child. How can I just pick up in the middle of the night and just leave? Why do I have to go? I have got this job and I just can't -- why do I have to just pick up and leave and go, go away, and how am I going to do that?"

He said again, "I have this bunch of money and I will send you money wherever you go, and we will go right now to the airport and wait for a plane and you will go away wherever you choose to go, and I will give you the money and you will stay until I tell you it's okay to come back and everything is cooled off."

Q Did she say anything further, or was she saying anything further?

MR. EDWARDS: Withdrawn.

Q Let me ask you this: Did she ever say, "Okay, let's go to the airplane"?

A No, she didn't.

Q What was she saying, as best you can recall?

A Why was it necessary for her to go away because she had this new -- I think she said, "I have this new job and my child."

Q You already told us this.

Did she say anything further concerning her

relations with Pacelli or his family?

A Oh, she said, "Vinny, you know I would never hurt you or Beverly. I love you both. You are both my dearest friends," and she moved over in the seat and she gave him a kiss on the cheek.

Q How long was this conversation going on in the car as you were driving out to Long Island or on Long Island?

A I am not exactly sure but I think it was about an hour, more or less. I was sort of dozing in the back seat.

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Q Would you say that they were talking constantly or only occasionally or what?

A It was a conversation that went back and forth. They were talking most of the time, most of the time.

Q Was there any conversation in which Pacelli asked her concerning things that either had or hadn't happened to her in the past?

A Yes.

Q What do you remember along those lines?

A I remember Pacelli asked Patsy "Have you ever been fingerprinted" and she said "No."

Q Anything further along those lines that you can remember now?

A No, I can't remember.

Q Mr. Lipsky, you mentioned earlier that Pacell was saying to her that he wanted her to go to South America and he was driving to the airport and so forth.

Was there any conversation or questions concerning passports or visas or anything like that?

A I am not 100 per cent sure.

Q Do you remember any such conversation?

A There may have been a conversation that she didn't have her passport with her and then the subject switched that all right --

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Q Do you remember any such conversation? You are saying there may have been. Do you remember any such conversation?

A I don't remember it, to the best of my memory. I don't exactly remember a conversation about a passport but I do remember him saying that she would go to Brazil or South American or California, you pick where you want to go.

Q After you were driving along and this conversation was going along -- withdrawn.

I think you said you were dozing part of the time, is that correct?

A That is true.

Q When you were sitting in the rear could you hear everything of what they were saying or only part of what they were saying or what?

A Part of what they were saying.

Q After a while was the car halted?

A Yes.

Q Where?

A I am not sure. It was off of a main highway and on a secondary road and Pacelli drove down this dirt road with a big puddle of water in it. He stopped the car and started to back out and Patsy Parks said "If you drive

in there we will need a snorkle to get out there is so much water."

We backed out of there and drove another minute or so on another little street until we came to an outdoor phone booth, a red and silver outdoor phone booth out in the middle of some vegetation, off the side of the road.

Q What did he do there?

A He pulled the car up and put the car in park and he said he had to call a friend of his and switch cars.

Q And switch cars?

A And get another car.

Q Did he say why?

A I am not exactly sure. I don't remember exactly if he said because that car was hot or he just wanted to get another car.

Q Do you remember him saying anything concerning why he wanted to change cars?

A No. I remember him saying he wanted to call up a friend of his who lived nearby and change cars.

Q And then what did he do?

A He got out of the car and he went into the phone booth and picked up the phone and the receiver and made this phony phone call or pretended to make a phone call, as he told me he was going to do previously.

Q Well, when he was actually in there, aside from him having told you it was a phony phone call could you really see whether it was a phony phone call or not?

A I could not.

Q What happened after he was in the phone booth?

A He remained there about a minute or less and he came back out and he came around to the front right door of the car where Patsy was sitting and he opened the door and he attempted to get into the front of the car and he said, "Barry, you drive, I am tired. You drive for a while." Patsy said, "Vinny, it's too crowded in here, I have my coat and everything on, it's too crowded, sit in the back."

He said "All right," and he got in the back behind Patsy Parks and I got out of the back seat and walked around the car in the back and got in behind the wheel.

Q After you got in behind the wheel what did you do?

A I put the car in drive from park and was just beginning to turn the wheel to the left and the wheels were just barely rolling, just barely moving when there was a struggle to my right and Pacelli was raised up over the back seat and he had, I believe, one arm, his left arm around Patsy Parks' head and he stabbed her in the throat with a knif She curled up into a ball in the front seat and put her hands

up in front of her face to protect her and curled up into a ball and she said, "Vinny, Vinny, don't hurt me, my child, I am a mother."

Pacelli said, "What? Are you kidding? Die you bitch," and he proceeded to strike her numerous times in the chest that sounded like punches with a knife. Then she slumped over in the front seat with her head towards the right-hand front door and he had been leaning over the front seat and he went like this and said "She is dead."

Q Then what did he say or what did he do?

A He said "Quick, quick, my glasses, she yanked off my glasses." They were down the floor there somewhere, "Get my glasses, I can't see."

I reached down. I don't remember if I turned on the light on the floor of the car or not, and I picked up these lenses and a pair of glasses and handed them to him and I think he put the lenses back in the glasses. Then after he put them back, the glasses, he said "Quick, drive to the place where we just were" and I said "What place?" And he said "The place where we just were with all the water," and I said "Where was that, I can't remember where that was" and he said "Just drive around here and I will find a proper spot."

I drove for two or three or four minutes and he

said "That place will do fine" and we drove into this road a dark area, I believe, and turned right and he said "Pull up over there to the side of the road and turn the lights off" and I did so.

Q Then what happened?

A I put the car in park and he said "Get the gas out of the trunk and bring it to me." I went around and unlocked the trunk and got two cans of gas and took the tops off and left them in the trunk and came back over towards the front of the car where he had taken Patsy Parks' body out of the front seat of the car and slung it on the side of the road.

He says "Give me the gas" and I handed him the two cans of gas. And he poured the gasoline over her. He said "Take these two empty cans back and get me the other two", and I took two empty cans back to the trunk and brought him the other two cans of gas. And he dumped those two cans of gas over her. Then I took those two, the last two cans of gas back to the trunk and slammed the trunk and came back to where he was standing.

Q And then did you have a conversation with him?

A Yes.

Q And what did he say to you and what did you say to him?

A He said to me "Barry, I have got gasoline all over my gloves and my coat, light a match and drop it."

Q What did you do?

A I lit a match and dropped it.

Q What happened?

A Flames flew up about 20 feet or so.

T5A Q These were the flames from her body?

A That's right.

Q And, Mr. Lipsky, let me ask you this. In the entire time that night from the time that you arrived at Pacelli's house until the time you lit the match and flung it on her, did you say a single thing in any effort to discourage Pacelli from murdering this girl?

A No, I did not.

Q And in that entire time from the time you arrived at Pacelli's house to the time you lit and threw on the match, did you try to do anything to discourage Pacelli from killing her?

A No, I did not.

Q All right, what happened after you set the body on fire?

A I was standing there looking at the flames. Pacelli said to me, "Come on, come on, quick get in the car, let's go."

So I got back behind the wheel and he got in the car and I started to drive away. I put the lights on. And he said, "How many gas cans, empty cans did you throw in the trunk?"

I said, "Four, I think."

He aid, "Stop the car."

I stopped the car and I got out and I went back and opened the trunk and there were four cans in there and I told him -- I do not remember if he got out with me. I think he did. I can't remember for sure. And we slammed the trunk because all four cans were in the trunk with the tops to the cans and he said, "It's good, if we had left one can out there we would have to go back and get it because your fingerprints would be on that can."

Q And then what happened?

A Then I proceeded to drive and he said, "Let's get out of here, let's find the way back to the city, let's get out of here."

I said, "I don't know where I am. Let's find," we found some highway and we started to drive and there was no, there were no familiar signs and after driving a couple of miles, I think, there was a gas station off the highway, off the main highway and we pulled into the gas station. I pulled the car into the gas station and stopped

the car and got out and went over and there was an attendant who was sleeping and I woke him up and asked him, "How do you get back to New York," and he pointed in some direction on the highway and I went back to the car--

Q Let me ask you this: Since you were there, have you been able to identify this place since?

A The gas station?

Q Yes.

A No, sir.

Q All right, after you returned to the car, where is it you went?

A I got back in the car and then Pacelli said he will drive. He got behind the wheel and he drove and I sat where he had been sitting in the front seat in the right. And he proceeded to drive back toward New York.

Q Any conversation in the car while you were returning to New York?

A Yes.

Q Do you remember what he said and what you said?

A Yes. He said, "Listen, when you get back to your apartment, clean it up real good and read about this and see what comes up in the newspapers. and read the articles but don't save any newspaper clippings. And also remember this, that in New York they need two to prove murder,

so there is nothing to worry about. It takes two people to testify to prove a murder."

Q Anything else that you can remember now?

A "Don't ever go back to the Hippopotamus," he told me never go back to the Hippopotamus again.

Q What were you saying, if anything, all this time?

A I was listening. I wasn't saying anything.

Q Where did you proceed to in the car?

A Drove on some highway until we came, unfamiliar to me, until we got back into lower Manhattan and drove up First Avenue and it was getting to be early in the morning and we pulled into a --

Q Pardon me. You mentioned it was becoming early in the morning. Let me ask you at this point as best you can around what time was it when Pacelli killed her and you set her on fire? Around what time was that?

A I think it was some time after 5 in the morning. I'm not certain.

Q All right, now I'm sorry, you were saying you were on your way back to New York and it was becoming early in the morning. Then what happened?

A He pulled the car into -- we needed gas. He pulled the car into a Texaco station at 36th Street and First Avenue. The gas station. He told the man to fill it up.

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I had Patsy Parks' pocketbook in the car, so he said, "Go through the pocketbook and see what's in there," and I went through it. I said, "There is a $20 bill."

He said, "Stick it in your pocket, keep it."

I said, "Here is a cocktail napkin with Benny Febre's phone number on it and his name."

He said, "Tear that up and take all the other junk in there, notebooks and things like that and get out of the car and throw them into the gas station's trash can which is right there between the gas pumps," and he said, "Don't throw the pocketbook away, just stick that under the seat for now."

Q Did you follow these orders?

A Yes, I did.

Q Then what happened?

A We got the gas and we left the gas station. He drove back up toward the area of his apartment in New Rochelle.

Q When you reached the area of the apartment in New Rochelle, where did you first proceed to?

A He turned right off of Pelham Road and drove a few blocks down the street until we came to an area which was fronted by a body of water. It seemed to be a bait and tackle place or a place where you rent boats. And he stopped the

car and it was broad daylight at this time and he said to me, "Here, put on my gloves," and he took his gloves off and gave them to me and I put them on.

He said, "Take this knife," and he produced the knife from somewhere in the open position with the blade open and he said to me, "Go up to the edge of that water and toss the knife out there as far as you can."

Q When he handed you this knife, had you seen this knife before?

A Yes, I had.

Q Where had you seen it before?

A I had seen it up in his apartment, in two different apartments he lived in. When he would get undressed, he would take his money and his change and his identification his wallet, and he would take the knife out from where-- his pocket, I believe, and place it on top of the TV set or the bureau with the money and change and ID from his pocket of his pants.

Q What description, if any, can you provide us with of the knife?

A Well, it was an aluminum colored knife, silver colored knife of one blade, I think. On one end it had a sort of a ring like you could -- so you could hook it to a chain or something and it was about that long.

Q When you say it's that long --

MR. EDWARDS: Indicating, your Honor, if I may, approximately 4 inches or 5 inches --

Q -- are you describing the blade or the whole thing? The blade or the whole knife?

A The knife in the closed position with the blade closed, the whole knife was about that long.

Q Anything further you can tell us concerning the knife?

A Yes. To the best of my memory, it had some numerals on it. I believe it said K-55. The K with the dash and a 55 after it.

It also had the insignia or a stamp of what I think was a black panther on it.

Q When he handed you the knife, what did you do with the knife?

A I took it with the gloves on and got out of the car and stepped over this chain that was there, walked up to the edge of the water and tossed the knife in with my right hand, underhanded, out into this body of water.

Q Do you know around how far you tossed it?

A To the bset of my memory, 20 to 25 feet.

Q As far as from you to me now?

A I would say further.

Q Further?

A I think so.

Q Was the water there when you threw it?

A Yes, sir.

Q Did it land in the water?

A It did.

Q Okay.

After you threw the knife in the water, then what happened?

A I went back and got back in the car.

Pacelli said, "Take those gloves and try and tear them up as best you can." And I took the gloves off and I tried to tear the leather gloves, one finger from another, and I tore them apart pretty good, and he drove back into the area of his apartment, a couple of blocks away, and he said, "Get out of the car and throw those gloves into a trash can," and I got out and did so.

Q Then what happened?

A I got back in the car and we went and parked the car in the parking lot of his apartment building, and he went upstairs and told me to take Patsy Parks' pocketbook with me upstairs, which I did so under my coat.

And as he was opening, getting ready to open the door to his apartment, he said, "Take the pocketbook and

and go down the hall and throw her pocketbook down the trash chute," and I did this and then I came back to his apartment, and the door was open, and his wife was standing there in a robe.

Q Was there a conversation that took place with you and Pacelli and Pacelli's wife standing there?

MR. DUKE: Objection.

THE COURT: Overruled.

A Yes.

Q To your memory, what did you say, if anything, and what did Pacelli say, if anything, and what did Beverly Pacelli say, if anything?

A Pacelli said, "Beverly, look Barry and I both over, look all over our clothes and in the back and see if there is any blood."

And we turned around and she looked and she said, "No, none that I can see."

And he said to her, "Listen, they are going to be coming, so if you have any grass or any coke or any money in the house, if we have any money in the house, get it all together, we're going to get it out of here because they will be coming here."

He then handed me his boots with zippers that he had been wearing and told me to take them and throw

them down the trash chute at the end of the hall where I had thrown Patsy Parks' pocketbook, and I did this.

And I returned to the apartment.

Q When you returned from doing this, then what happened?

A Pacelli said to Beverly, "Listen, give us some cleaning equipment. We got to go out and clean the car."

And she went in the kitchen and got some cleaning equipment, paper towels, a roll of paper towels, some disinfectant, this type of thing, and a brush and some Ajax, I think, and liquid and some cleaning equipment and gave it to the two of us, and we carried it down to the car and put it in the front seat of the car, and he drove out of his parking lot and he drove to an area where there was this little house surrounded by a fence, which was also on a large body of water, where there was a sort of a parking lot, and it was bright daylight now; somewhere, I think, around 7:00, 7:30 in the morning, but I'm not sure.

And he told me to start to try and clean the blood from the car, clean the blood from the car. I started to clean the rug and the right front seat and the step panel or wherever you get in the car, where there was some blood, and as I was doing that, Pacelli opened the trunk of the car and took the gas cans, the four gas

cans out and went over to the fence where the water was and threw the cans into the water.

Q Were they empty or full?

A The cans were empty.

Q Did they sink of float, if you know?

A My best memory, they floated.

Q Then what did you do?

A We had finished cleaning up the car. We got back in the car and drove back to the vicinity near his apartment, and he said, "Listen, take all these paper towels with all this blood and stuff on them, and throw them in one of these trash barrels over here," a few blocks from his apartment.

I got out and I went over to the trash barrel and I shoved the rags with the blood all the way down to the bottom, and he said to me, "I didn't tellyou to shove them all the way to the bottom. I just told you to throw them in there."

I got back in the car and we went back upstairs into the apartment after he parked the car in the parking lot of his apartment again.

Q And then what happened?

A We entered the apartment and I think Barbara Jalaba was awake then.

Q Barbara Jalaba is who?

A Vincent Pacelli's sister-in-law.

Q His wife's sister?

A Correct.

Q Okay.

You say she was there?

A Yes.

Q Then what happened?

MR. DUKE: Objection, your Honor. I think the question should be more precise.

THE COURT: No, that's all right.

A Pacelli said, "You will sleep over here tonight. Beverly, get Barry a blanket and a pillow. Sleep here on the living room rug, which is thick," and he said, "I'm tired and I am going to bed."

He went downstairs and Abby Perez was sleeping downstairs.

Q What was Abby Perez doing in the house, if you know?

A He was just sleeping there. I think it was with Barbara Jalaba.

Q After Pacelli went downstairs, what did you do?

A I walked downstairs and Pacelli and Perez were having a conversation. When I walked in they stopped,

and I walked back upstairs and I was tired, and I took off my shirt and pants and got the blanket and laid down on the floor and went to sleep.

THE COURT: All right. We will take a short recess.

(Recess)

(In open court; jury present)

MR. EDWARDS: May I continue, your Honor?

THE COURT: Yes.

Q I think when we recessed, you were just going to sleep, is that correct, in Pacelli's apartment?

A Yes.

Q Now, did there come a time later when you woke up?

A Ys, sir.

Q And when you woke up, was there a conversation in progress?

A Yes, sir.

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Q Who was talking?

A Beverly Pacelli, Barbara Jalaba and Vincent Pacelli.

Q To your memory, where were these people when you woke up? Where were they talking?

A In the living room where I was sleeping.

Q What were they saying? What was each of them saying, as you remember?

A I think it was Beverly was saying to Pacelli, "You guys did a real lousy job of cleaning up that car because Barbara and I had to go to the market and we had to go down and spend another hour cleaning the blood out of that car."

Q Did Pacelli say anything?

A I don't recall what he said, if he said anything at that point.

Q What is the next thing that happened?

A He said, "All right, everybody get dressed. We are going to go and return the car."

Q Then what happened?

A Everybody got dressed. I got dressed and Pacelli and Beverly and Barbara and Abby Perez, who was sleeping downstairs, got up and Abby went and drove his Thunderbird and Barbara Jalaba and Pacelli went with him

in his Thunderbird, and Beverly Pacelli drove the murder car, and I sat in the right front seat of them, the same Plymouth, the murder car, and we followed the first car, Abby Perez' Thunderbird down into the Bronx.

Q You say Beverly Pacelli was in the car with you.

Was this Pacelli's wife?

A That is correct.

Q Where did you go?

A Down into the Bronx, to an Econocar Rental place on Westchester Avenue.

Q What happened when you arrived there?

A Beverly and I got out of the car and went into the Econocar office and she went in to return the car, and tol the man behind the counter she wanted to return the car and pay for it.

Q And did she pay for it?

A Yes, she did.

Q Do you remember how much?

A I think it was around $300.

Q How did she pay for it?

A In cash.

Q After she paid for the car, what did you then do?

A We went across the street where Perez' Thunderbird

was parked, and Beverly and I got into the car and we all drove downtown, down to New York, down the West Side Highway, and Perez was going to look at a place where he was going to buy some rugs for his new apartment, and they dropped me off on 40th Street near Park Avenue.

Q You say 40th?

A Yes, 40th.

Q Near Park Avenue?

A Yes.

Q When they put you off there, did you have a conversation with Pacelli?

A Yes.

Q What did he say and what did you say?

A He said, "Listen, go back up to your place. Go back up to your apartment and clean up and go out and go take one of your credit cards and rent another car, rent me another car and meet me tonight at 7:00 o'clock." I believe he told me up on 83rd and Second Avenue or somewhere in that area.

Q Did he tell you what this car you were to rent was for? Why he wanted you to rent it, that is.

A Yes, because he didn't have a car and he needed another set of wheels. He needed another car for transportation.

Q And did you rent another car?

A Yes, I did.

Q Where?

A At an Avis Rent-A-Car place.

Q Where is that Avis place?

A I believe it was on 64th Street between Second and Third Avenues. That is New York.

Q How much time wouldyou say passed between the time that Beverly Jalaba in your presence turned in the murder car to the time that you rented this new car from Avis?

A Maybe about three hours would be my best estimate.

Q What kind of a car did you rent, this new car?

A A 1972 Plymouth Fury 3 model, I believe, dark green in color with a green vinyl top and green interior with New Jersey license plates.

Q As you described it, is it fair to say that this was a car that in outward appearance was somewhat similar to the murder car?

A That is correct.

Q Did you intend to rent a rent-a-car similar in appearance to the murder car?

A No, I did not.

Q What were the differences in appearance between

this new car you rented at Avis and the murder car that Beverly Jalaba had just turned in?

A The murder car had New York plates and the new rented car had New Jersey plates. The interior of the murder car was black; the interior of the newly rented car was green. And the top of the merder car was black vinyl; the top of the new car, I believe was green vinyl.

Q After you rented this new car, what did you do with it?

A I think I drove back to my apartment and then I met Pacelli at the time he told me -- I think it was 7:00 o'clock -- at 83rd Street and Second Avenue. I believe that is where I met him.

Q Did you spend that evening with Pacelli, in his company?

A Yes, I did.

Q And who kept the car at the end of the evening?

A He did.

Q What day of the week was this that you rented the new car?

A Friday afternoon.

Q Friday afternoon?

A Yes.

Q I take it the murder was then early on Friday morning?

A That is correct.

Q All right.

I direct your attention to sometime in the period around the week end, Friday night or Saturday night or Sunday night, sometime in there.

Did you have a meal with Pacelli someplace?

A Yes.

Q Where?

A At the Caka Saka, a Japanese restaurant around 37th, 38th Street and Second Avenue.

Q To your best present memory, are you able to say just when on the week end you had dinner with him there?

A No, sir, I am not exactly sure which night it was.

Q Well, at that time -- excuse me. Let me ask you this:

Could it have been Friday night, the same evening you turned the new car over to him?

A It could have been.

Q Could it have been Saturday?

A Yes, sir.

Q Could it have been Sunday?

A It could have been. But I think that restaurant was closed on Sunday. I am not sure of it, but I think that place was closed on Sunday.

Q In any event, when you had this conversation with him at the restaurant, did you have any conversation concerning the killing of Patsy Parks?

A Yes.

Q What is it that you remember he said and what did you say?

A He said to me, Pacelli said to me, "It's a good thing I did what I did when I did it, because I have been in communication with my lawyer and he told me my trial is about to start next Tuesday."

Q Was it sometime that week end that you were also at the home of Pacelli's mother?

A That is true.

Q Could that have been the same night you were at the Japanese restaurant?

MR. DUKE: I object to the leading.

MR. EDWARDS: I don't think I am leading, really. I am really inquiring.

THE COURT: Overruled.

A It could have been the same night.

Q Do you know if it was?

A No, I am not sure.

Q Did you attend a movie that week end sometime with some of these people you testified about?

A Yes, I did.

Q Do you remember what night you went to the movies?

A I am not exactly sure. I think, to the best of my memory now, it was Saturday or Sunday night that we went to the movie.

Q And the night you went to the movie, was that the same night you were at Pacelli's mother's house, or do you know?

A To the best of my memory now, I think when we went to the movies we previously were up at his mother's house before we all went to the movie.

Q Who went to the movies?

A Pacelli, myself, Beverly Pacelli, Barbara Jalaba -- I am not sure, I think Beverly Pacelli's other sister, Marianne, went to the movies, but I am not sure. I can't recall who else went to the movie.

Q Did there come a time, either during the week end or shortly after the week end, when you were sitting in a car with Pacelli and with Al Bracer and with Abby Perez?

A Yes.

Q Do you know a man named Frank Serrano?

A Yes, I do.

Q By the way, to the best of your memory, when do you think this conversation was you are talking about now, the conversation when you were in the car with Pacelli and Bracer and Perez?

A To the best of my memory, I think it was on the following Tuesday or Wednesday night.

Q Are you sure?

A I am pretty sure it was Tuesday or Wednesday night following the murder.

Q Do you have a memory at the present time as to how Pacelli was clothed?

A Yes.

Q And how do you think he was clothed?

A He had on a suit, but he had taken off his tie.

Q Does he normally wear a suit?

A He does not.

Q When you were sitting there in the car, the four of you, was there a conversation between Pacelli on the one hand and Perez and Bracer on the other hand, concerning this Frank Serrano?

MR. DUKE: Objection.

THE COURT: Is your objection that this is leading?

MR. DUKE: Among others. That is not the sole objection.

May we approach the bench?

THE COURT: All right.

(At the side bar)

MR. WALL: Going by the last trial, your Honor, I believe what Mr.Edwards is about to do is offer testimony that Pacelli told Perez to tell Serrano to leave town for a few weeks, or he would get what Patsy Parks got.

I suggest, in light of his prior testimony as to what took place, the only purpose that can be served by this testimony certainly isn't an admission of complicity because we already have the statement from Lipsky as to that, but it involves a threat against some other person, and I don't see its relevance is sufficiently probative to outweigh the prejudice of involving some other threat.

On that basis we object.

MR. EDWARDS: Your Honor, if I may say why I am offering this. As I indicated in the memorandum of law No. 4 that I filed, I am offering this conversation because it occurred or it is an admission, certainly by implication,

by Pacelli in the presence of Bracer that Pacelli was responsible for the murder of Patsy Parks.

That is very important because of Bracer's connection with the destruction of the car. It shows Bracer's knowledge, and when combined with the other circumstances, that Pacelli was responsible for the murder.

The further point is this: Mr. Wall is claiming prejudice because I am putting in testimony that involves a threat directed at another person, Frank Serrano.

I may say, your Honor, that I gave Mr. Wall notice several days before I filed this memo that I intended to elicit evidence of this threat. I will show that this evidence is admissible simply on its own because I will then elicit from Lipsky that he had had previous conversations with Pacelli concerning Frank Serrano, and that these conversations involved the fact that Serrano was another person who had knowledge concerning that same box that was connected with the narcotics case coming up to trial.

Therefore, it would be admissible as bearing on Pacelli's intent and, therefore, there is no improper prejudice, but the vital thing is, I simply must put it in to show an admission by Pacelli concerning the Parks murder in the presence of Al Bracer. That is a vital part of the

evidence in this case.

jqh 1 Lipsky-direct

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THE COURT: Didn't we have some testimony here from Lipsky or from Quinn about a Frank in connection with the box?

MR. EDWARDS: Your Honor, Patsy Parks' testimony before the grand jury which was read into evidence, I believe mentioned Frank Cerano. I think it did. The name Frank has been bandied around on a couple of occasions in the past but nothing more than that. I simply have to show that Bracer had knowledge of Pacelli's involvement.

THE COURT: There are some things you have to show that may be the law of evidence. But I am going to permit this. I am not sure what an implied admission is.

MR. WALL: There is already testimony that in Bracer's presence Pacelli smacked his hands and said "That god dam box, I know what I have to do," and then Bracer said he did not want to go with him. If it's being offered now to show that Bracer knew what had happened there is already testimony.

THE COURT: I take it it's being offered as an admission by Pacelli that he did what he is accused of doing. I am not sure whether it's an implied admission or expressed admission.

MR. WALL: Given by the only witness who is to testify as to that and it's a bootstrap operation.

MR. EDWARDS: That has nothing to do with admissibility.

THE COURT: I don't think so.

(In open court.)

MR. EDWARDS: Can we have the reporter read back the last question?

THE COURT: Yes.

(Question read.)

Q Mr. Lipsky, can you answer the question? Did you hear it?

A Yes, I heard it.

Q What is the answer?

A There was a conversation.

Q To your memory, what is that Pacelli said to Perez or to Bracer or to the two of them and what was said in reply concerning Frank Cerano?

A Pacelli said, speaking mainly to Perez, "You better tell your friend Frankie that he better get out of town and get lost."

Q Did you know this Frank Cerano?

A Yes, I did.

Q Had you heard him discussed previously between the same people?

A Yes.

Q When these people used the expression Frankie, do you know who they meant?

A Yes.

Q Who?

A Frank Cerano.

Q What is that Pacelli said?

MR. DUKE: Objection, asked and answered.

MR. EDWARDS: This is just a clarification.

THE COURT: Overruled.

A Pacelli said "You tell that friend of yours Frankie he better get out of town or he is going to get the same thing that happened to the girl."

MR. DUKE: I move to strike that.

THE COURT: Overruled. Your motion is denied.

Q What did Perez say concerning Frank Cerano, if anything, in reply?

A He said "Vinny, don't worry, I will take care of him, I will take care of him, I will tell him to go away. I will take care of him and don't worry about it. Don't think about it. I will take care of it."

Q Did Pacelli say anything further concerning Frank Cerano?

A He said to Abby Perez, "Well, you better make sure that you do."

Q Before this conversation in the car had you had other conversations with Pacelli concerning this same Frank Cerano?

A Yes.

Q Did any of these conversations have to do in some way with the narcotics case that Pacelli was coming to trial on and we have been hearing about here?

A Yes.

Q On that subject what do you remember Pacelli previously saying to you concerning Frank Cerano?

A Only that Frank Cerano had some knowledge about a box that was involved in Pacelli's previous narcotics arrest

Q By the way, when Pacelli said -- if I am paraphrasing it right -- "Tell Cerano to get out of town or the same thing will happen to him that happened to the girl", did anyone say "Who do you mean by that girl?"

A No.

Q After this conversation in the car concerning Frank Cerano did there come a time, and I am not asking you how you found out, I am simply asking you did there come a time when it came to your attention that Patsy Parks' corpse had been identified as being [illegible]?

A Yes.

Q At some time after you learned this did you have

jqh5 Lipsky-direct

a meeting with Al Bracer and Abby Perez?

A Yes.

Q And at that meeting did they hand you anything?

A Yes.

Q What did they hand you?

MR. DUKE: Objection, your Honor.

Q What did they hand you?

THE COURT: Wait a minute.

MR. EDWARDS: I am sorry, your Honor. I beg your pardon.

THE COURT: Come up, counsel.

(At the side bar.)

THE COURT: I don't know what this is about.

MR. EDWARDS: I will make it clear. I am proceeding on the basis of the final section in the memo number 4 that I filed. This involves the fact that after the body was found and identified Bracer and Perez met with Lipsky, gave him $1,000 and told him to take off for Florida. That is all I am planning to elicit on that conversation.

THE COURT: All you have to do is get from Lipsky that Bracer gave him $1,000 and told him to go to Florida, right?

MR. EDWARDS: Yes.

THE COURT: Nothing more?

jqh6 Lipsky-direct

MR. EDWARDS: No. The only other question, and it has nothing to do with conversation, and perhaps Mr. Duke will stipulate, I simply want to bring out in some manner through stipulation or through the testimony that when they told him this and sent him to Florida Pacelli was in custody from thereafter.

MR. WALL: That is the reason we say this is inadmissible.

MR. EDWARDS: Let's leave that then and I wil ask for a stipulation later.

THE COURT: I thought that--

MR. EDWARDS: I won't ask it now, your Honor. I will take it up later.

MR. DUKE: I just think that telling them to go to Florida is squarely within the Court of Appeals' ruling. It's hearsay. It's after the conspiracy terminated. It's not by co-conspirators. On at least two of those grounds it is inadmissible and it's irrelevant. The giving of the money is irrelevant and what they said in connection with it that has meaning and it's hearsay. It's covered by the previous ruling.

MR. EDWARDS: I will lay it out because I think this is, in reality, a new situation and this limited testimony is in no way hearsay of the kind that the Court

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of Appeals objected to the last time they reviewed this case. It's being offered simply to show why it is that Lipsky departed for Florida and how it happened that he did so.

It's not being offered for the truth of any assertion contained therein. Now the Court of Appeals was concerned on this whole conversation of Bassi's apartment because they were saying that this was being offered as implied hearsay, that is they were offering it to try and use it to suggest that Pacelli had previously confessed to Bracer and Perez, something of which there was no evidence in the record whatsoever. Now it's in the record. It's in the record in this conversation in the car. That is my basis for distinction. It seems to me that there is no implied hearsay now.

THE COURT: You are offering it then--

MR. EDWARDS: Simply why Lipsky went to Florida and not for the truth of the matter therein.

MR. WALL: In the last trial there was testimony of the threat to Cerano made in the presence of Bracer and Perez and the jury can draw--

MR. EDWARDS: No, there was not. That was not elicited.

THE COURT: Let's not argue about that. What I am trying to get at is that the ultimate thrust of this is

that Bracer and Perez gave him the $1,000 because they knew that Pacelli wanted him to do it and there is only one reason, because Pacelli was guilty.

MR. DUKE: That is precisely why the Court of Appeals ruled out the conversation of Bassi's.

MR. EDWARDS: As I said in my memo, the thing is that the Court of Appeals ruled it out because there was no evidence in the record at that time because we didn't offer the conversation in the car the last time. There was no evidence in the record at the last trial showing that Bracer knew or Perez knew that Pacelli was the killer.

THE COURT: In the last trial what was the testimony? He went to Florida but did he say he got some money from somebody?

MR. EDWARDS: Yes, your Honor, Bracer and Perez. The difference between the two trials, your Honor--

THE COURT: What is the difference in the testimony? That is what you are offering now.

MR. EDWARDS: There is none except that instead of offering that whole series of conversations in Bassi's apartment--

THE COURT: I mean as to the $1,000.

MR. EDWARDS: Essentially the same. He gave him $1,000 and told him to go to Florida.

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THE COURT: All right. I think I know your points. Give me a couple of minutes.

MR. WALL: It was not in the last trial, the conversation in the car. Mr. Edwards is correct.

THE COURT: I know that wasn't.

T7A (In open court.)

THE COURT: The objection is overruled.

MR. EDWARDS: Your Honor, again could we ask the reporter to read the last question.

(Question read.)

Q Mr. Lipsky, you heard the question?

A Yes.

Q Would you answer it. What is the answer, sir?

A $1,000.

Q Did they tell you to do anything?

A Yes.

Q What did they tell you to do?

A To go to Florida.

Q Now, Mr. Lipsky, did you then go to Florida?

A I did.

Q Can you recall the approximate on which you went to Florida?

A I think it was Friday night, February 11, 1972.

Q How long did you remain Florida?

A About three weeks.

Q Do you remember when you returned to New York?

A Yes.

Q By what means of transportation did you return to New York?

A Airplane.

Q Were you in Florida the entire time in between?

A Yes.

Q Anddo you remember when you returned to New York?

A Yes.

Q When?

A The night of March 2, 1972.

Q Where did you fly into New York?

A LaGuardia Airport.

Q Was someone there waiting for you?

A Yes, sir.

Q Who was it that was waiting for you?

A A group of law enforcement people.

Q Did they take you anywhere?

A Yes.

Q Where did they take you?

A To the police station in Mineola, New York, upstairs in the homicide squad office.

Q After that time were criminal charges made against

you in Nassau County in connection with the killing of Patsy Parks?

A Yes.

Q Did a time come later when you pleaded to manslaughter in connection with the killing of Patsy Parks?

A Yes.

Q Are you incarcerated at the present time?

A I am.

Q How long have you been incarcerated? Since when?

A Since March 2, 1972, about 34 and one-half months.

Q After you pleaded to manslaughter, were you sentenced?

A I was.

Q And that was by a judge in Nassau County?

A That is correct.

Q That is, a New York judge rather than a federal judge?

A That is correct.

Q What is the sentence you received?

A An indeterminate term up to 20 years.

Q Now, Mr. Lipsky, have you testified on various occasions since then in federal court?

A Yes, I have.

Q On two of these occasions, was your testimony in

some respects false and incorrect?

A Yes, it was.

Q Mr. Lipsky, first I want to show you several things. Let me show you Government's Exhibit 3 in evidence. I ask you if you can identify this photo?

A Yes, I can.

Q Who is it?

A Patsy Parks.

Q And that is the young woman that you say in the early morning of February 4th Pacelli killed and you set on fire, is that right?

A That is right.

MR. EDWARDS: Your Honor, may we have this object marked as the next exhibit for identification.

xx (Government Exhibit 4 marked for identification.)

Q Mr. Lipsky, I ask you to examine Exhibit 4 for identification and I ask you if that is similar to an object you have seen before?

A Yes, sir.

Q What is it similar to?

A The knife that Pacelli killed Patsy Parks with.

MR. EDWARDS: Your Honor, this will be identified by other persons at a later time, but may I offer it now.

MR. DUKE: No objection.

(Government Exhibit 4 received in evidence.)

MR. EDWARDS: Your Honor, may I have a moment with counsel.

(Pause.)

MR. EDWARDS: May we have this marked the next exhibit please.

(Government's Exhibit 5 marked for identification.)

Q Mr. Lipsky, I show you Government's Exhibit 5 for identification and will you examine it, please, and tell us what that is a picture of.

A A picture of the ushers at Vincent Pacelli, Jr.'s wedding.

Q Are you in the picture?

A I am.

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Q Is Al Bracer in the picture?

A He is.

Q Is Abby Perez in the picture?

A He is.

Q Is Benny Febre in the picture?

A Yes, he is.

Q Assuming that other counsel may wish to know, will you be able to point out which is which of these people?

A Yes, sir.

MR. EDWARDS: Your Honor, I offer it in evidence.

MR. DUKE: No objection.

xxx (Government's Exhibits No. 5 for identification was received in evidence.)

MR. EDWARDS: Your Honor, at this time, if I may, now that they are in evidence, I would like to pass 4 and 5 to the jury.

THE COURT: Yes.

MR. EDWARDS: Thank you.

Your Honor, I have no further questions at this time.

MR. DUKE: Your Honor, may we approach the bench?

THE COURT: Yes.

(At the side bar)

MR. DUKE: Your Honor, we would like to request a recess for purposes of clarifying the 3500 and the discovery. I understand there is no objection on the part of the Government.

THE COURT: Well, we would only have another ten minutes if we kept to our schedule, and there are things I think we want to talk about.

MR. DUKE: I received a note --

THE COURT: We will recess now. Then we can talk. We don't need --

Do you want to be on the record?

MR. DUKE: Yes.

I received a note suggesting that there are reporters from the Times present. I don't know whether that's true or not.

THE COURT: There is one from the Times and there is one from the New York Law Journal, and I think there is one from the Associated Press.

MR. DUKE: I suggest the jury should be advised not to read the newspapers.

MR. EDWARDS: Surely.

MR. DUKE: Yes.

THE COURT: Not to look at any newspapers. I think

that's right.

MR. EDWARDS: Or radio or television.

THE COURT: I think that's a good suggestion.

MR. O'DONNELL: Obviously, not to talk to anyone, but that goes without saying.

THE COURT: No, it goes with saying.

(In open court)

THE COURT: Ladies and gentlemen, have you finished with those two exhibits?

MR. EDWARDS: Your Honor, perhaps I should say, although the application hasn't been made, it's normal for us not to confer with the witness while he is on cross-examination and we will not be doing so.

THE COURT: All right, ladies and gentlemen. We are going to adjourn at this time.

I understand from Mr. Farrar that some of you have inquired about what our daily schedule will be. To the extent that it's possible to do so, I plan to begin at 9:30 in the morning and to run until 5:00 o'clock or approximately 5:00 o'clock at night. If there is going to be any significant change in that schedule, I'll give you all the advance notice I can, but I think you can assume, unless you hear from me to the contrary, that our regular schedule will be 9:30 to 5:00. So we will adjourn

UNITED STATES OF AMERICA

v. 73 Cr. 105

VINCENT PACELLI

January 22, 1975
9:50 a.m.

(Trial resumed)

(In open court; jury present)

B A R R Y G. L I P S K Y, resumed.

THE COURT: Good morning, ladies and gentlemen.

MR. EDWARDS: Your Honor, before the cross-examination commences, we have a stipulation to place upon the record between the parties.

It is hereby stipulated and agreed between the Government and the defendant Vincent Pacelli that on February 3 and 4, 1972, Pacelli had in fact no telephone in his apartment.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Lipsky, my name is Steven Duke and there is Pierce O'Donnell and Patrick Wall.

A Sorry, Mr. Duke, I didn't hear the first name.

Q My name is Steven Duke. This is Pierce O'Donnell and this is Patrick Wall. We represent Pacelli.

Mr. Lipsky, have you taken any drugs in the last twenty-four hours?

A Some pills to help me sleep.

Q What kind of pills?

A Called flurezepan. That was not today.

Q I can't hear you.

A The name of the pill is called flurezepan.

Q Who gave them to you?

A The hospital. I got them from a doctor in the hospital.

Q When were you in the hospital?

A I wasn't at the hospital. The prescription was refilled at the hospital for me.

Q Did you see the doctor?

A I have seen this doctor that's issued me this prescription.

Q What kind of doctor is he? What is his specialty?

A I don't know his specialty. He is a doctor, a doctor in a government hospital.

Q When did you last see him?

A I think it's about six weeks ago, roughly.

Q What was the nature of your complaint when you visited him about six weeks ago?

A That I was nervous. I had trouble sleeping. The

place where I lived was noisy and I had trouble sleeping and constant nervousness and he gave me two prescriptions.

Q That is for two different types of pills?

A That is correct.

Q What is the second one?

A Valium.

Q Have you been taking those two pills, two types of pills during the past six weeks?

A Yes. Mainly the valium, but not every day.

Q Did you take any valium in the last two days?

A Yes, about two days ago is the last time I took any valium.

Q Mr. Lipsky, in 1969 what were you doing for a living?

A In 1969 I was a stock broker.

Q And did there come a time in 1969 when you entered into an agreement with several persons to sell some stolen securities?

A That is correct.

Q And you were to sell the stolen securities through the brokerage firm that you worked for?

A Correct.

Q Who provided the stolen securities to you?

A Two men.

Q Who were they?

A Vincent Teresa and Robert Cardillo.

Q Did you sell the stolen securities through your brokerage firm?

A I did.

Q Were they approximately $40,000 in value?

A Approximately.

Q Were you subsequently questioned by your employer concerning the source of those securities?

A Yes.

Q And did you tell your employer that a person named Paul McGauhey came in and opened an account and gave you the securities?

A Yes.

Q Was that true?

A No.

Q Were you subsequently interviewed concerning the sale of these securities by the Federal Bureau of Investigation?

A Yes.

Q Was that on or about September -- in September 1969?

A I don't remember the date, Mr. Duke.

Q Is that approximately correct?

A Well, like I said, I don't remember the date. It may be the correct date.

Q Do you remember the date that you sold the stolen stock?

A Not exactly. I think it was in April. In April of '69, to the best of my memory. Or March. I'm not sure.

Q In any event, did you give a detailed statement to the Federal Bureau of Investigation concerning the sale of that stock?

A Yes.

Q Was that statement true?

A No.

Q Was it a lie?

A Yes. I believe the statement was a lie.

Q Did you, on May 7, 1970, testify before a federal grand jury in the Southern District of Florida?

A Yes.

Q And did you take the same oath then that you took yesterday?

A Yes.

Q You raised your hand and swore to tell the truth, the whole truth and nothing but the truth, so help you, God?

A Yes.

Q Did you give approximately 38 pages of grand jury testimony?

A I don't know how many pages there were, Mr. Duke.

MR. DUKE: May I show the witness a document, your Honor?

THE COURT: Yes.

MR. DUKE: Mark this, please.

xxx (Defendant's Exhibit A was marked for identification.)

Q Showing you this Exhibit A for identification, Mr. Lipsky. Do you recognize that document?

A Yes, I do.

Q Is that your testimony before the grand jury in the Southern District of Florida?

A Yes, it is.

Q Is it approximately 38 pages?

A It is.

Q Is there any truth in that 38 pages, Mr. Lipsky?

A Yes, Mr. Duke, there is some truth in these-- in this testimony.

Q How much of the 38 pages is true?

A Well, Mr. Duke, I'd have to read each question and each answer to tell you which is true and which is not true.

Q Did you tell a story in there about how you came to get the stock and sell it?

A Yes.

Q Was that story true or false?

A That was false.

Q Was it perjury?

MR. EDWARDS: Objection, your Honor. That is a legal matter.

THE COURT: Yes. Sustained.

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Q Was it a deliberate lie?

A Yes.

Q Were you indicted with several other people for conspiring to sell and for selling the stolen securities?

A Yes.

Q And did you hire an attorney to defend you, to represent you in connection with that indictment?

A Yes.

Q Who was that attorney?

A Walter E. Gwinn.

Q Did you tell him a story about the stock transaction?

A Did I tell him a story about the stock transaction?

Q Yes.

A Yes, I did.

Q Did you tell him the truth?

A No, I didn't.

Q Did you subsequently plead guilty to one count of that indictment?

A I did.

Q Was that in August of 1970?

A I'm not sure of the date. I think it was.

Q Did you have a meeting on or about October 28, 1971, with your attorney, Mr. Betz and some other individuals?

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MR. EDWARDS: Your Honor, I am sorry. I think there is some confusion here. Mr. Betz to whom he is referring was not Mr. Lipsky's attorney. I think this question suggests that he was.

MR. DUKE: Withdrawn.

Q Mr. Lipsky, were you sentenced in this stock, stolen stock case on October 28, 1971?

A I believe that was the date I was sentenced.

Q On the day that you were sentenced, did you and your attorney, Mr. Gwinn, have a meeting with Mr. Betz and other officials, federal officials?

A To the best of my memory, I think it was after the sentencing that the meeting was held.

Q After the sentencing?

A Yes.

Q What was the subject matter of the meeting? What did you talk about?

A I don't recall exactly.

Q Approximately?

A I think the subject of whether I had been involved in any other illegal stock transactions was discussed. And Mr. Betz -- and Mr. Betz, and my attorney, I believe, had talked amongst themselves and said that the aspects of the case to which I just pled guilty to would not be

discussed but they were willing to discuss some other things with me and I do not remember exactly or even in part what else they asked me.

Q Did you discuss other things with them?

A Vaguely. It wasn't a avery long meeting.

Q They asked you for some information about other criminal activities?

A I don't recall exactly. I think they did.

Q And did you give them some information?

A Like I just said, Mr. Duke, I don't remember what I told them. I don't remember giving them much information that was worthwhile at all.

Q Whether or not it was worthwhile, did you give them any information concerning other criminal activities?

A I don't recall what that conversation was about, as I sit here to the best of my memory, Mr. Duke.

Q Prior to your being sentenced, Mr. Lipsky, did you and your attorney tell the -- was Mr. Betz the principal prosecutor in that stolen stock case?

A I believe he was.

Q Did you and your attorney tell Mr. Betz that at some point prior to your guilty plea that -- did you give them some information about the stolen stock case?

A I just got done telling you, Mr. Duke, when Mr.

Gwinn told me before these people came over to his office for this meeting that the stock case would be one subject that would not be discussed.

Q But that was after you were sentenced or at least on the same day that you were sentenced?

A I think it was.

Q Did your attorney negotiate with the government for your -- did he enter into an agreement with the government for you to plead guilty to one count?

A Mr. Gwinn, my attorney, had some conversations with Mr. Betz, the government attorney and not in my presence and told me that he had been talking to Mr. Betz about my pleading guilty.

Q He told you he had a deal with Mr. Betz, didn't he, Mr. Lipsky?

A I don't remember if the word deal was used but he said he had spoken to Mr. Betz and he thought that I could get probation.

Q Didn't he tell you that Mr. Betz agreed to recommend three years' probation?

A I think the figure was less than that.

Q Two years?

A One or two years' probation, as I recall.

Q Your attorney told you that Mr. Betz had agreed

to recommend to the court two years' probation?

A To the best of my memory, yes.

Q And you, in reliance upon that, pled guilty to one count in the indictment, is that correct?

A That's correct.

Q What, if anything, did you do, Mr. Lipsky, for the government in return for their promise to recommend two years' probation?

A Nothing.

Q Did you agree to do anything?

A I did not.

Q Mr. Lipsky, did you ever tell Mr. Gwinn the truth concerning the stolen stock, your role in it?

MR. EDWARDS: Objection, your Honor.

THE COURT: Read the question back, please.

(Read)

MR. EDWARDS: Mr. Gwinn is his attorney, your Honor.

THE COURT: Overruled.

Q Do you recall the question?

A May I hear the question again, please?

MR. DUKE: Would you read it back, Mr. Reporter?

(Read)

THE COURT: If you are raising, Mr. Edwards, the c ent privilege, I don't think you are entitled to do so.

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MR. EDWARDS: Fine, your Honor.

THE COURT: I don't remember telling Mr. Gwinn the truth concerning that stock case until after I was arrested in Nassau County.

Q My question was, did you ever tell him?

A I think I may have told him at a much later date.

Q Was it on March 13, 1974?

A I don't know what that date refers to.

Q Perhaps I could refresh your recollection.

You went down to Florida in late March of 1974 to discuss some matters with the Strike Force, did you not?

A I think it was March of last year. Yes.

Q Prior to that did you have a telephone conversation with Mr. Gwinn?

A I don't recall. I may have.

MR. DUKE: May I have this marked, please.

(Defendant Exhibit B marked for identification.)

xx

Q Showing you Defendant's Exhibit B for identification, Mr. Lipsky. Does that refresh your recollection--

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A If you would let me look at it, Mr. Duke, I'll tell you in a moment.

Q Would you look at page 5, Mr. Lipsky.

Did you have a telephone conversation with Mr. Gwinn on March 13, 1974?

A Yes, I did.

Q And did you on that occasion tell him that you had been lying to him all along?

A Lying to him?

Q Yes. Concerning some aspects of the stolen stock deal?

A Yes.

Q After you pled guilty to the one count of the conspiracy charges, were you interviewed by a probation officer?

A Yes, I was.

Q For purposes of preparing a pre-sentence report for the judge?

A I think so.

Q Approximately when was that? Was it the same day you were sentenced?

A It was either the same day I pled or the same day

I was sentenced. One or the other. I am not sure which.

Q Lid you tell the probation officer in that connection, "I'm very sorry I became involved with this person for illegal gain because of the misery and trouble that doing so has caused me and my family. Thinking clearly about such a situation again, I know I would choose against ever making such an illegal move again."

Did you tell him that?

A Yes, sir, I believe I did.

Q Was that a lie?

A Yes.

Q And you knew that that statement was going to be given to the judge?

A I didn't know what would happen to the statement. I assumed it was government property. I don't know what they would do with the statement.

Q Didn't the probation officer tell you that he was preparing a statement for the judge who was going to sentence you?

A I don't remember him using those words, Mr. Duke, but he asked me to sit down and fill out a form and asked me some questions.

Q What did he tell you was the purpose of sitting down and answering some questions?

A It was a pre-sentence report. I think that's what he said. I'm not sure.

Q Are you saying you had no idea that the judge was going to get this information?

A No, I'm not saying that.

Q You knew he would, didn't you?

A Yes, I guess I knew he would.

Q And in connection with your efforts to get a -- get probation on that charge, did you tell the probation officer that you had employment in New York City?

A To my best memory I did.

Q Where did you tell him you were employed?

A I think I told him I worked for Scott Packaging Industries or CSB Industires in New York City.

Q You knew that would be a condition of getting probation, didn't you, Mr. Lipsky? That you be gainfully, lawfully employed?

A Yes.

Q And you knew that that statement about being employed by this particular business would be made available to the judge, didn't you?

A Yes.

Q And you even got a friend of yours to write a letter indicating that you were employed by his company,

didn't you?

A I think I did.

Q Was that the truth?

A Was what the truth?

Q That you were employed by that company?

A No, I was not actually employed by that company.

Q It was a lie?

A That's correct.

Q Mr. Lipsky, when you sold this stolen stock for these two men that you mentioned, did you need money? Were you broke?

A I needed money.

Q Is that why you sold the stolen stock?

A Yes.

Q How much profit did you get out of that transaction?

A $6,000.

Q Mr. Lipsky, didn't your mother in 1968 and 1969 pay bills for you or give you money in an amount approximating $57,000?

A I'm not sure of the figure but -- I don't exactly remember her paying the bills either.

Q What did she do for you financially during that period?

A She loaned me some money.

Q How much?

A I don't remember.

Q Did she write checks to you during that period?

A I think sometimes she did.

Q And she paid some of your bills?

A Yes, she paid some of my bills, I think. I am not sure if she paid them or if I paid them.

Q Did you forge your mother's signature to some checks during that period?

A Yes, I did.

Q About $18,000 worth?

A I'm not sure of the figure, Mr. Duke.

Q Do you think it would be more or less than $18,000?

A I'm not sure. It could be more. It could be less. At this point I'm not -- I don't remember how much money was involved.

Q Is that approximately correct, 18,000?

A Like I said, Mr. Duke, it is quite a while. I don't remember exactly how much.

Q Was it a large amount of money?

A $18,000 is a large amount of money, so I would say yes.

Q And you were making money as a stockbroker during that period, weren't you?

A Sometimes yes and sometimes no.

Q How much did you make in 1968 as a stockbroker?

A I have no idea.

Q More than 10,000 a year?

A I really don't remember. The market was bad then. I worked on a commission basis and some weeks I made some money if I sold some stock or bought some stock. Some weeks I made no money.

Q How about 1969, did you make more than 10,000 in commissions in 1969?

A I don't recall, Mr. Duke.

Q Did you file income tax returns in 1968?

A I don't remember about 1968, whether I did or not. I think -- I may have. I'm not sure.

Q How about 1969?

A The same answer. I'm not sure when the last time I filed an income tax form was.

Q Did you report on your income tax return the money that you obtained from forging your mother's signature?

A No.

Q Did you report the $6,000 you got from the stolen stock?

A No.

Q Did you write checks to Marge Jackline for approximately $2,100 during this period?

A I don't remember the exact figure. I remember writing checks, I think I remember writing some checks to Marge Jacklone.

Q For approximately $2,000?

A Like I just said, I don't remember the figure. I remember sending her some checks.

Q Was it more or less than 2,000?

A I can't recall, Mr. Duke. It's been a long time.

Q Was is your best recollection?

A My best recollection is I don't recall how much money I gave Margie Jacklone.

Q Could it have been 10,000?

A I don't think so.

Q Mr. Lipsky, you testified yesterday that you had sort of a partnership with Marge Jacklone in the selling of cocaine?

A Yes.

Q Did these checks have anything to do with that partnership?

A No, I don't believe so.

Q Are you certain?

A I'm fairly certain because the cocaine--

Q Just answer the questions.

A Could you ask me a question again, please.

Q Are certain that the checks you wrote to Marge Jacklone in '68 and in '69 had nothing to do with your partnership with her in the cocaine business?

A I am pretty well sure, as I sit here now, that those checks in 1968 and '69 to Margie Jacklone had nothing to do with the cocaine business. I was involved with her in a later year.

Q But you are not certain?

A I am pretty well certain.

Q Mr. Lipsky, since testifying before the grand jury in Florida in May of 1970, you testified to a number of grand juries here in this courthouse, did you not?

A That's correct.

Q And you testified in about five trials in this courthouse?

A Yes.

Q Did you testify in a trial before Judge Gagliardi?

A Yes.

Q Did you testify in the trial before Judge Gagliardi in December of 1972?

A Yes.

Q And did you take the same oath that you took yesterday in that trial?

A Yes, I did.

Q And you testified before a jury just like the jury that is sitting here?

A Yes.

Q Did you lie?

A Yes, I did.

Q Did you testify in another case in June of 1972?

A Yes.

Q In this courthouse?

A Yes.

Q Was that also before Judge Gagliardi?

A It was.

Q Did you take the same oath then that you took yesterday?

A Yes.

Q You testified before a jury just like the jury that is here today?

A That's correct.

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Q Did you lie?

A Yes, I did.

Q Did you testify before a grand jury in this courthouse on April 11, 1972?

A I don't remember that date. I may have.

Q Let me show you Exhibit 3566.

A What part --

Q Just look at the date.

THE COURT: Is it in evidence?

MR. DUKE: No.

A Just the date?

Q Well, look at the yellow part, too, while you are at it.

Did you testify before a federal grand jury in this courthouse on April 11, 1972?

A Yes.

Q Did you lie?

A I don't think I did lie.

If you can show me what you are referring to, I'll tell you whether I did or not.

Q Were you asked these two questions and did you give these answers:

"Q Mr. Lipsky, I want to advise you that this grand jury is investigating a possible violation of the

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federal narcotics laws. Do you understand that you can refuse to answer any question that I ask on the grounds that it may tend to incriminate you?

"A Yes, sir.

"Q Do you understand that anything you say here can be used against you in a court of law?

"A Yes, sir."

Were you asked those questions and did you give those answers?

A Yes.

Q Was that the truth?

A Was what the truth? I don't see what you are driving at.

Q Was it your understanding on April 11, 1972 that anything you said could be used against you in a court of law?

A Yes.

MR. EDWARDS: Your Honor, could we have a side bar on this? I think there is a legal matter here.

(At the side bar)

MR. EDWARDS: Your Honor, I think I understand the point that Mr. Duke is adverting to and what I'd like to put on the record and make clear, if I may, is this.

First, of course, the questions that he is being asked, as I am sure your Honor is aware, is sort of a rote series of questions. They are put to anyone who appears before a grand jury who is testifying to his own criminal activity.

Number two, they, in claiming it to be a lie, are referring to the fact that Lipsky's lawyer had earlier told him that the Government was not going to prosecute him on narcotics cases on which he gave information --

THE COURT: I think I understand that, but the question was, "Do you understand that anything which you say could be used against you?"

MR. EDWARDS: That's what I'm coming to, your Honor.

THE COURT: It seems to me so far we are perfectly all right.

MR. EDWARDS: I know, your Honor. The point I wish to make is that having received that assurance from his attorney, whether or not he had a Fifth Amendment right in testifying before the grand jury, which is what those questions involve, is really a legal matter that I'm not sure that the answer could be secured without voluminous research. I don't think it's fair to put it to him as a lie.

that is for redirect.

THE COURT: No. I think the way Mr. Duke has been proceeding, we haven't had any problems so far. The witness has said yes, he understood it could be used against him. Whether it would be used against him is something else.

I think it's all right.

MR. EDWARDS: Now, as I see the problem coming at a later time, I may ask the Court to explain to the jury that there is no inconsistency there.

THE COURT: We will see what we have to do.

MR. DUKE: Your Honor, I do intend, since he denied that, I do intend to pursue the fact that he had an understanding with the Government and his attorney.

THE COURT: All right.

MR. EDWARDS: The point is, there is no inconsistency. That's what I have to ask the Court to make clear.

THE COURT: Whether I need to do it or whether that's something for later on, I'm not sure. Let's wait.

MR. EDWARDS: I think it's a legal matter. I am going to ask you as a matter of law.

THE COURT: All right.

(In open court)

6 lzmch Lipsky-cross

MR. DUKE: Is there a question pending?

THE COURT: I don't think so.

Q Mr. Lipsky, isn't it a fact that earlier in the day, prior to your grand jury testimony on April 11, 1972, you had a conversation, a telephone conversation with your attorney, Mr. Gwinn?

A I think so, but if you show me the document to which you are referring, I will be more sure.

MR. DUKE: May I have this marked, please?

xxx (Defendant's Exhibit C was marked for identification.)

Q Showing you Exhibit C for identification, Mr. Lipsky, would you look at Page 20, about the middle of the page?

Did you have a conversation --

A Excuse me for a moment.

All right.

Q Did you have a conversation with your attorney, Mr. Gwinn, over the telephone on April 11, 1972?

A Yes.

THE COURT: And he said it wasn't a lie.

I think from a technical, legal standpoint, we are all right; regardless of any arrangement that was made, the things he said before the grand jury could be used against him.

This is something different, it seems to me, from whether or not there was some understanding about whether or not he would be prosecuted.

MR. EDWARDS: I think so, too, your Honor. That's the point I am making.

He is trying to show --

MR. NESLAND: It is misleading.

THE COURT: I don't think it is misleading so far.

MR. DUKE: I intend to show on that very same day, that morning, he had an understanding, an explicit understanding that nothing that came out of his mouth could or would be used against him.

THE COURT: No. "Would be used against him" is something different from "could be used against him."

MR. EDWARDS: That is my very point, your Honor.

MR. NESLAND: It could be used against him in a lot of other ways.

MR. DUKE: That's a distinction, it seems to me,

Q That was prior to your grand jury testimony on that date, was it not?

A I think so.

Q And were you in this courthouse when you had that conversation --

MR. EDWARDS: Objection, your Honor.

THE COURT: I'm not sure of the relevance of the location. I will sustain the objection, at least for the time being.

Q Was Mr. Gwinn talking to someone else on the telephone --

MR. EDWARDS: Objection, your Honor.

Q -- prior to his talking to you?

MR. EDWARDS: Objection.

THE COURT: Sustained.

Q Did Mr. Gwinn tell you that he had a verbal contract with the Government?

A Mr. Gwinn told me he had an agreement. Mr. Gwinn told me.

Q Did he tell you he had a verbal contract with the Government?

A I don't remember him using those words, Mr. Duke.

Q Would you look at Page 25 of that exhibit?

A Yes.

Q About the middle of the page.

A Yes, I see it.

Q Did Mr. Gwinn tell you that you had a verbal contract with the Government?

A Yes, it says that here.

Q And did he tell you that that verbal contract was they are not going to prosecute you for whatever else you tell them?

A I remember Mr. Gwinn --

Q Will you answer the question, Mr. Lipsky?

Did Mr. Gwinn tell you that or not?

A I don't remember him using those words, Mr. Duke.

Q Would you look at the middle of Page 26, please?

A I see that.

MR. DUKE: Mr. Reporter, could you read back the last question?

(Record read)

MR. DUKE: Withdrawn.

Q Did Mr. Gwinn tell you that that verbal contract with the Government was that they are not going to prosecute you for whatever else you tell them?

A Yes.

Q He told you that?

A Yes, he did.

Q And did he also say that that verbal contract included any damn thing?

A Would you tell me where to look, Mr. Duke? I don't know.

Q About an inch below what you just looked at.

A I see that.

Q Did he tell you that?

A That I wouldn't be prosecuted for any damn thing?

Q Yes.

A Yes. It's in this paper. He told me that.

Q He did tell you that?

A Yes, he did.

Q By the way, you knew that Mr. Gwinn was taping that conversation, didn't you?

A I believe so.

Q Well, look down about another inch.

A Yes, I see that.

Q You knew he was taping the conversation, did you not?

A I knew it then. I don't know if I knew it at the beginning of the conversation.

Q Did he tell you to hold it a minute while he changed the tape?

A Yes, he did.

Q You don't recall whether you knew it before that conversation began?

A I don't recall. If you show me something to refresh my memory --

Q On Page 22, Mr. Lipsky.

A Yes.

Q About four inches from the bottom, beginning, "All right."

A Yes.

Q Mr. Gwinn told you he was recording the conversation, didn't he?

A That's correct.

Q And he also told you that he had recorded the verbal contract with the Government?

A I don't see where it says that in so many words.

Q Well, did he tell you, "I just had the foresight to record both the things that they said as I'm now recording"?

A Yes.

Q Was he referring to the verbal contract that he made with the Government?

A I don't know what he was referring to. He ends on a word. He doesn't end the sentence.

Q You interrupted him and said, "Yeah," didn't you?

A Yes.

Q You knew that he was telling you that he had recorded the verbal contract with the Government, didn't you?

A Yes, I believe so.

Q Did Mr. Gwinn in that same conversation also tell you that you had complete transactional immunity?

A If he did, I don't recall him. Can you show me where you want me to look, refresh my memory?

Q Page 30, the top of the page.

A Yes, I see where he said it.

Q Did he tell you that the Government had promised him that they will give you complete transactional immunity?

A I just answered that question, Mr. Duke.

Q What was the answer?

A The answer was -- the answer is yes. Mr. Gwinn said that to me on the phone.

Q Mr. Lipsky, did you have a chance to scan most of that document that's before you?

A No.

Just now?

Q Yes.

A No, I didn't. Just where you asked me to look.

Q Have you seen it on other occasions?

A I may have. I'm not sure.

Q Can you tell us whether or not that is an accurate account of your conversations on April 11, 1972?

A This says April 10th, Mr. Duke.

Q Beginning on Page 10, from Page 10 forward.

A There is no Page 10 here, Mr. Duke.

Q There is no Page 10?

A No. It starts on Page 15.

Q Beginning at Page 20.

A Sorry.

What was your question?

Q Do you recognize that as an accurate reproduction of your conversation on the telephone on April 11, 1972?

A Yes.

Q It is a fact, then, isn't it, Mr. Lipsky, that when you testified later that same day before the grand jury, you didn't tell the truth?

MR. EDWARDS: Objection, your Honor. There is no inconsistency, and I think I'm entitled to an instruction on the legal matter.

THE COURT: Sustained.

Q Mr. Lipsky, when you testified before that grand jury on April 11, 1972, you knew, didn't you, that when a Government witness testifies in the trial, who has previously testified before a grand jury, the grand jury testimony is made available to the defense; you knew that, didn't you?

MR. EDWARDS: Objection, your Honor.

THE COURT: No, I'll allow it.

A I believe I know that's the procedure.

Q You went through a trial, didn't you, down in Florida on the stock case before you pled guilty?

A You mean was I a defendant?

Q Yes.

A I was.

Q You knew what 3500's are, didn't you?

A Yes.

T B

Q There is no doubt in your mind that on April 11, 1972, you knew that what you were saying to that grand jury would be disclosed to defense counsel if that testimony -- if you ever testified in a criminal trial, you knew that, didn't you?

A Yes, I believe so.

Q And you fully intended to testify in a criminal trial on April 11, 1972, that is, on that date you intended to testify to one or more future trials?

A I am sorry, Mr. Duke. I think you said the criminal trial on April 11, 1972,

Q Withdrawn. On April 11, 1972, at the very moment that you were giving this grand jury testimony in Exhibit 3566, you intended to testify for the government in one or more criminal prosecutions?

A Yes, I did.

Q Therefore, you knew that your grand jury testimony on April 11, 1972, would in one or more future cases be disclosed to the defense counsel, did you not?

A I believe as I just answered that question before for you, I believe I know that the grand jury testimony is made available at trial.

Q And you knew that this particular testimony in Exhibit 3566 that you gave would in the future be made

available to defense counsel in a criminal trial, this very testimony?

MR. EDWARDS: I again object to the entire--

THE COURT: I think the question has been asked and answered a couple of times, Mr. Duke.

MR. DUKE: Forgive me, your Honor.

(Pause.)

Q Mr. Lipsky, isn't it a fact that when you testified before that grand jury on April 11, 1972, you intended to hide the fact that you had a verbal contract of immunity with the United States Government?

A It was not my intent.

Q You knew that would be the consequence of your testimony, didn't you?

MR. EDWARDS: Objection, your Honor. There is no inconsistency here and the only reason he should be permitted to inquire as if there is an inconsistent, there is none and I object to the entire line.

MR. DUKE: Your Honor, I object to Mr. Edwards' speech before the jury.

THE COURT: I will allow this question.

A Would you please repeat your question.

Q You knew that the consequence of your grand jury testimony would be that the fact that you had a contract,

a verbal contract of immunity with the United States Government would be hidden from defense counsel, you knew that would be the consequence of your testimony, the result?

A I don't understand the way your question is put.

Q Perhaps I can make it simple.

You knew that when you got up on the stand in a federal criminal trial, you knew that because of the way you had testified, defense counsel would not know that you had a deal with the United States Government?

THE COURT: Mr. --

MR. EDWARDS: Your Honor, I am objecting to this because --

THE COURT: Yes, I sustain the objection. I sustain the objection.

Q Mr. Lipsky, you testified that you lied in two trials in this courthouse in 1972. What did you lie about in those trials?

A I lied about, or made inaccurate statements about my understandings -- my understanding with the federal government with respect to whether or not I would be prosecuted on -- prosecuted in this courthouse.

Q You swore under oath that you had no understanding whatsoever, did you not?

A I believe I did.

Q And both of those trials were after April 11, 1972?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, did your attorney, Mr. Gwinn, suggest that you lie about your understanding with the government?

THE COURT: Could I have that question.

(Read)

THE COURT: I'll sustain the objection to that question.

MR. EDWARDS: Your Honor, I am willing to have him answer it.

THE COURT: All right, go ahead.

THE WITNESS: May I hear the question again.

MR. DUKE: Will you read it back.

(Read)

A Mr. Gwinn never told me to lie about my understanding and his conversations and my understanding with the government.

Q Did he suggest to you that you should, if questioned about your understanding with the government, say that you had no understanding?

A He did not.

Q In words or substance did he tell you that?

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A He did not.

MR. DUKE: May I have this marked, please.

(Defendant Exhibit D marked for identification.)

MR. EDWARDS: Your Honor, may we approach the bench on this.

THE COURT: Yes.

(At the side bar.)

MR. EDWARDS: Your Honor, this letter and the language that he is directing Lipsky's attention to involves no inconsistency and the reason that I am opposing its introduction or a reference to the language that is marked here is simply that it invades the ruling, in my opinion, that your Honor made on our trial memorandum number 3 concerning all these allegations regarding whether Mr. Febre knew that he was testifying falsely and so forth and we are going to go right into that and we will be at it ad infinitum. I ask your Honor to note that this letter is not advice of any kind that Lipsky lie about anything and I don't think he is entitled to question him on that as if it were.

MR. EDWARDS: Part of the difficulty with this thing, your Honor, is that it requires going into the entire history of that series of events and I don't see how this can really add anything here.

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THE COURT: What about this, Mr. Duke? Is it this part that we are dealing with?

MR. DUKE: Yes. First of all I'm simply using it at this point to refresh the witness' recollection. It clearly rebuts any claim that it was an innocent mistake on his part, either his perjury on the two trials or in the grand jury of April 11th and I don't think it implicates Febre. I do intend at a later point to make an offer of proof on Febre but I think it doesn't implicate Febre and I intend to drop the matter--

THE COURT: What recollection do you want refreshed?

MR. DUKE: Did his attorney advise him that he should deny that he had any understanding with the government. I think he said no, absolutely not. I think that is a lie. I think his attorney plainly, if he received that letter, did advise him.

MR. EDWARDS: Your Honor, I have no objection as long as Mr. Duke does not refer to the contents and as long as the witness is told not to refer to the contents. I have no objection to him just being asked whether it refreshes his recollection and whether his attorney told him to lie but I do object to any reference to the contents of this letter.

THE COURT: We will go that far and no further.

T2A

(In open court.)

Q I will show you Defendant's Exhibit D for identification and ask you to look at that and in particular reference to that part.

A Yes, I remember this.

Q Did you receive Defendant's Exhibit D in the mail, Mr. Lipsky?

A I did.

Q I ask you if that refreshes your recollection concerning whether or not Mr. Gwinn your attorney suggested that you deny having any understanding with the government?

A No, Mr. Duke, it doesn't suggest.

MR. EDWARDS: Your Honor, I think he has answered the question.

THE COURT: Yes.

Q Mr. Lipsky, did you ever tell anybody in the United States Government that if they didn't give you a formal grant of immunity, you would refuse to testify?

MR. EDWARDS: Could we place time or a context.

THE COURT: It is all right the way it is, Mr. Edwards. The question is at any time ever. It may be completely immaterial if it is at a time that doesn't have any relation to our problems.

MR. EDWARDS: Could I ask it be clarified in one way. A formal grant of immunity as to what.

THE COURT: I think Mr. Edwards has two good points, Mr. Duke.

Can you rephrase your question?

Q Mr. Lipsky, you know what a formal grant of immunity is, don't you?

A I believe so.

Q What is it?

A A piece of paper signed by some member of the United States Government that someone who testifies or gives information to the government will not be prosecuted.

Q Does the judge sign something in that connection too?

A I don't know whether the judge does or not, Mr. Duke.

Q Between March 3, 1972, and today, did you ever tell anybody in the United States Attorney's office in this courthouse that you wouldn't testify unless you got a formal grant of immunity?

MR. EDWARDS: Your Honor, again, as to what? He wouldn't testify as to what? What is he receiving immunity on and what is he testifying on.

Q Did you ever demand of anybody during that period of time, of any of the United States Attorneys in this

courthouse, did you ever demand a formal grant of immunity from prosecution?

MR. EDWARDS: Same objection, your Honor.

THE COURT: I will allow it.

A I think I once asked someone in the federal government if they could get me some kind of immunity. I think I did ask someone in the U.S. Attorney's office in this building if he would get me immunity and I think his answer to me was that it wasn't needed in my case, that I didn't need it.

Q Did you accept that?

A Yes, sir, I believe I did.

Q When you asked this person if you could have immunity, you wanted one of these documents that you referred to, signed by somebody in the government; is that what you were referring to in your conversation with this person?

A I believe so, yes.

Q Was that Mr. Phillips?

A I think it was-- if I did have this conversation which I don't really exactly recall now, it was with Mr. Phillips.

Q As you sit there on that stand now, Mr. Lipsky, did you ever get a formal grant of immunity?

A No, Mr. Duke.

1/22/75
PM 5a

(At the side bar)

MR. EDWARDS: Your Honor, directing your attention to M for identification, I notice the writing in the right-hand lower portion, the phase "nigger writing."

The only person that Mr. Lipsky is testifying against is Mr. Pacelli. Mr. Pacelli is not a black or a Negro, and therefore, in addition to other reasons, it seems to me that is totally irrelevant and can only be intended to prejudice members of the jury.

THE COURT: I will not receive that in evidence. We already have the testimony that he has written and used those names and that is enough.

(In open court)

Q Mr. Lipsky, do you know anybody named Wart?

A Yes.

Q Who is that?

A It's a nickname a friend of mine gave me many years ago.

Q And you use that alias also on occasion?

A I wouldn't call it an alias. It's a nickname someone gave me.

Q Showing you N for identification, did you write that letter?

A Yes, I wrote the letter.

MR. DUKE: I offer it.

THE COURT: May I see counsel for a moment?

(At the side bar)

THE COURT: I assume you have a number of documents which he wrote in which he used an alias.

MR. DUKE: That is part of it, your Honor, but he also signed his cards and letters with a claw. I think that is important for the jury.

THE COURT: This one he has on his own letterhead.

I suppose it's sufficient to show he has written various postcards and other postcards, birthday cards, Christmas cards, and used various names.

It seems to me, frankly, the fact he sent a card like this which is what it is and puts on it a claw which has six fingers on it and signs it "Wart," I don't think it's terribly important, but it may be to your psychiatrist.

I would think you could do this by testimony and not need to put these in evidence.

MR. EDWARDS: Your Honor, may I suggest what I hope can serve as a compromise? If Mr. Duke wants to put those two particular things in evidence, I would be agreeable so long as we could bring this to an end.

THE COURT: He has more.

MR. DUKE: I want to ask him about that picture.

MR. EDWARDS: What is it?

MR. DUKE: It's a picture of a gun moll. I want to ask him does he know her, was it at his suggestion that she posed.

MR. O'DONNELL: The world of psychiatry is a mystery to us and that is why we are trying to lay a foundation. We would offer it if it was.

THE COURT: I will not allow any questions about this picture, for goodness sake.

MR. EDWARDS: Could we mark it for identification?

MR. DUKE: It's marked O for identification.

MR. EDWARDS: Is the picture to which Mr. Duke and his Honor just referred Exhibit O?

MR. DUKE: Yes.

What about putting in a couple of these?

MR. EDWARDS: It's acceptable if you put in B for identification and N for identification, in the hopes --

THE COURT: Not this one.

MR. EDWARDS: Not the one with the word "nigger" on it.

MR. DUKE: I think that is very significant.

THE COURT: I know you do, but I am not going to allow it.

What about this one?

MR. EDWARDS: We are now referring to Q for identification.

MR. O'DONNELL: That is the one where he says the examination was a complete farce and they were talking to the D.A. on the phone with Nassau County, I believe.

MR. DUKE: It impeaches his testimony. It's evidence of his egomania and it's evidence that the examination was not very thorough.

MR. EDWARDS: Well, your Honor --

THE COURT: I don't think it adds anything. I won't allow it.

MR. DUKE: Your Honor, can I be heard on this?

THE COURT: What about this picture? Is there any particular significance to this person?

MR. DUKE: I don't know. I don't know who that person is. I want to ask him.

It may be his mother, for all I know.

MR. EDWARDS: Your Honor, I would suppose of the vast number of people in this country who are addicted to taking photographs, although I am not one of them --

THE COURT: Unless you have some particular significance about this --

MR. DUKE: It just shows this man's feeling for violence.

Your Honor, I must ask you to reconsider Q. If it's not evidence of the nature of the examination, it impeaches his testimony about the examination, and if it's none of those things, it shows this man is an egomaniac which we intend to show through numerous documents.

He thinks everybody is stupid and incompetent including the United States Attorney's Office.

THE COURT: All right, I will take this.

(In open court)

Q Mr. Lipsky, would you look at Q for identification, please? I just want to ask you if you wrote it. I will not ask you any questions about it.

A I wrote it.

MR. DUKE: I offer Defendant's Exhibits N for identification, P as in Paul, and Q as in quick.

MR. EDWARDS: No objection.

xxx (Defendant's Exhibits N, P and Q for identification were received in evidence.)

Q Mr. Lipsky, showing you Exhibits N and P in evidence, there is something that looks like a claw on the end of those two documents --

MR. EDWARDS: Your Honor, might I suggest they simply be handed to the jury?

THE COURT: I sustain the objection.

MR. DUKE: Your Honor, may I read to the jury Exhibit Q in evidence?

THE COURT: Yes.

MR. DUKE: This is a letter dated Friday, January 5, 1973. Barry Lipsky addressed to Walter Gwinn, Miami, Florida.

"Mr. Gwinn, I was spoken to on Tuesday, December 26, 1972, at Meadowbrook Hospital psychiatrist office for about one and a half hours by two old men, who asked me a lot of stupid questions. They this called a "competency examination." These two men were on the phone with the DA while I was in the room with them and they asked me a lot of matters about the murder. This examination to me was a complete farce. This is all I have time to say at this time." Signed "Barry Lipsky."

Q Mr. Lipsky, the name,Mr. Graves, that you occasionally use, have you called up friends of yours and said, "This is Mr. Graves"?

A I have.

Q Have you written letters to friends and signed it Mr. Graves?

A I have.

Q Have you written letters to people in the United States Attorney's Office and signed it "Mr. Graves"?

A People from the United States Attorney's Office?

Q Yes.

A I don't remember sending anything to anyone in the United States Attorney's Office signed Mr. Graves.

Q Anybody in the Bureau of Narcotics?

A Yes.

Q You wrote a letter to somebody in the Bureau of Narcotics and signed it M. T. Graves?

A I don't remember if I said Mr. Graves or M. T. Graves. It had the word "Graves" in it, the name "Graves."

Q You still do that, don't you? You still use that thing?

A I do.

Q When did you first begin to use it?

A When I lived in Florida back in the middle '60's, the early '60's.

Q Mr. M. T. Graves is a narrator of a television program you used to watch in Florida, isn't that true?

A That is right.

Q And Mr. Graves was a man in a prison cell, isn't that right?

A That is right.

Q And the show was a horror film program?

A Horror films were shown, yes.

Q Mr. M. T. Graves is behind bars and tells viewers what horror film is going to be shown that day?

A That is correct.

Q It was a favorite pasttime of yours to watch horror films, wasn't it?

A I used to like to watch horror movies on TV.

Q You still like to watch horror movies, Mr. Lipsky?

A Yes.

Q And you used to get up early in the morning to catch the Late Show if a horror film was on?

A Get up early in the morning to catch the Late Show?

Q Or stay up late for that purpose, the Late, Late Show?

A No.

I was questioned about this before. I don't remember purposely forcing myself to stay up 3:00, 4:00 in the morning. If I happened to be awake while there was a horror film on in New York or Florida, I would stay up and see it.

Q Did you check the programming to keep yourself aware of all the horror films that were on?

A Did I look through the TV Guide?

Q Yes.

A I looked through the TV Guide because I liked movies and I wanted to see what was on, horror or otherwise.

T5B

Q You used to make faces and noises at the TV set?

A That is not true.

Q You never did that?

A In Florida when a group of people, when I was younger, much younger, a group of people came over to my house, friends of mine and they were the ones that stuck a tag on me MT Graves and they used to gather in my house on Saturday or Sunday afternoons whenever this show was on and we would watch the horror movies.

Q You would make faces --

MR. EDWARDS: I don't think he finished.

A We would watch the shows and other people when something would happen in a horror movie or whatever it was, Frankenstein, something like that, some people would say, friends of mine would say, look at and they would make a noise and we would laugh and I would make a noise back, emulating the noise that the monster or whatever, person, or doctor on the horror made.

Q On some occasions, you were making faces and noises at the character on the screen, weren't you?

A I think you have it somewhat mixed up, Mr. Duke. I used to make those faces at children I know to amuse them.

Q Who were you making those noises to when you were watching Frankenstein on the television?

A Friends of mine who were doing the same thing and sitting in the same room with me, for our amusement.

Q Mr. Lipsky, you testified, did you not, in this courthouse in April and early May of 1973, did you not?

A I believe I did.

Q You were under oath?

A That is correct.

Q You were testifying before a jury?

A Yes.

Q I ask you if you were asked this question and gave this answer, page 201.

"Q You were permitted to plead guilty to manslaughter on a murder indictment in Nassau County, isn't that correct?

"A That is correct.

"Q Wasn't that as a result of the intervention of the United States Government in exchange for your testimony here?

"A I don't know that the United States Government intervened at all, I just know I went on trial for murder and sat there for one week and on the eighth day of the trial, I believe my attorney -- Mr. Dillon, the attorney for the state, the District Attorney said I had a choice. That I could plead guilty to manslaughter in the first degree with no stipulated sentence and I did so."

Were you asked those questions and did you give thos answers?

MR. EDWARDS: Your Honor, I am objecting to this. I think no foundation has been laid. This isn't contradictory to anything I remember. I think he has to put a question to the witness and if there is some kind of conflict, he could ask him.

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MR. DUKE: I am trying tosave time, your Honor. I will connect it up.

THE COURT: Mr. Edwards, I assume this is a matter of credibility.

MR. EDWARDS: I assume so. I think he simply should ask him concerning the facts prior to asking him about his prior testimony.

THE COURT: I think we will go ahead.

Q Your guilty plea to manslaughter was on what date?

A I think it was January 15, 1973, to my best memory.

Q Did your attorney tell you in a letter on June 23, 1972, that he had talked to several officials and had encouraged them to begin discussions with the state officials?

A I believe so.

MR. EDWARDS: Objection.

Q Did you understand--

THE COURT: I will let the answer stand.

Q Did your attorney write a letter July 25, 1972, informing you that he had been discussing certain matters with the people in the city today and they planned to have a discussion with Mr. Dillon when he comes back from vacation?

THE COURT: Mr. Duke, I am not quite sure about this. Does this relate to your previous question?

MR. DUKE: Yes, it does.

MR. EDWARDS: Your Honor, I submit I see no relationship. I do submit that the witness ought to be cross-examined on the facts prior to being cross-examined on a lot of prior writings.

THE COURT: That is what I was wondering about, Mr. Duke. I thought the problem was what he said or didn't say in March or April or May of 1973.

MR. DUKE: I will proceed that way.

Q Did the federal government assist you in persuading the Nassau County District Attorney's office and Judge Spitzer to accept a manslaughter plea as a reduction from first degree murder?

A Obviously there was some -- what was your word? Encouragement?

Q Did they assist you in persuading Nassau County

officials and the judge to accept a plea to manslaughter in lieu of the first degree murder charge?

A Yes, I believe they did assist in some way.

Q There is no doubt in your mind, is there, Mr. Lipsky?

A No, there isn't.

Q And there was no doubt in your mind in May, 1973, was there?

A May of 1973, what is that? What are you referring to?

Q When you testified in this courthouse. There was no doubt in your mind at that time that Nassau County--that the federal government, several officials in the federal government had assisted you in persuading Nassau County to accept a manslaughter plea?

A I believe that is correct.

Q Is there any doubt in your mind about it, Mr. Lipsky?

A About what?

Q That you knew in May of 1973 that federal officials had attempted to persuade and had assisted you and your attorney in persuading Nassau County to accept a manslaughter plea?

THE COURT: He already answered that question.

He answered it just a moment ago. He said there was no do

MR. DUKE: I didn't hear him say that, your Honor.

Q Will you accept what the judge said you said, Mr. Lipsky?

MR. EDWARDS: Objection.

MR. DUKE: Your Honor, I don't believe he said it.

THE COURT: Do you understand what we are talking about?

THE WITNESS: Yes, I do.

THE COURT: Am I correct in what I said was your answer?

THE WITNESS: Yes, sir.

Q Why did you testify, Mr. Lipsky, in May of 1973 in this courthouse under oath before a jury that you didn't know the government intervened at all?

A I may have forgotten Mr. Duke about what it was and the method and the way that the government tried to assist me.

Q Mr. Lipsky, you were present in court in Nassau County January 15, 1973, when the manslaughter plea was accepted, were you not?

A That is correct.

Q Didn't you see a man named Mr. Phillips -- excuse me. Wasn't a letter from Mr. Phillips read to the judge

in the courtroom?

A There was a letter read to the judge in the courtroom. I think it was from Mr. Phillips. I am not sure.

Q Mr. Phillips, an Assistant United States Attorney, is that correct?

A He was.

Q And the letter told the judge about your cooperation with the government, testifying in several cases and so forth.

A I believe it did.

Q Is there any doubt in your mind, Mr. Lipsky?

A No, there isn't.

Q And that letter from Mr. Phillips that was read to Judge Spitzer didn't relate to any false testimony or the fact that you had any prior conversation in this courthouse, did it?

A I don't remember it saying anything about any false testimony prior by me.

Q And you are quite sure, aren't you, Mr. Lipsky, that nobody on January 15, 1973, in the courtroom or in any document that you are aware of told Judge Spitzer that you had lied on the stand on at least two prior occasions? You are quite sure that didn't happen, aren't you?

A Yes, I am pretty sure that I never heard anybody

say anything about that on January 15th.

Q Then it was a lie, wasn't it, Mr. Lipsky, a deliberate lie when you testified in May of 1973 with respect to your manslaughter plea "I don't know that the United States Government intervened at all. I just know I went on trial for murder, sat there for a week. On the eighth day of trial I believe my attorney, Mr. Dillon, the attorney for the state District Attorney said that I had a choice. I could plead guilty to manslaughter in the first degree with no stipulation of sentence and that was a deliberate lie."

A No, Mr. Duke. What I forgot to say at that time was that I forgot about the reading of the letter by Mr. Frank Dillon from the federal government to the court or to the district attorney's office in Nassau County.

Q Is that all you forgot about, Mr. Lipsky?

MR. EDWARDS: Objection. It is a meaningless question.

THE COURT: I will sustain the objection. Can you be more precise, Mr. Duke?

Q Mr. Lipsky, didn't you know, through a series of letters from your attorney that officials in the Federal Government were negotiating with District Attorney Kahn on your behalf? You knew that, didn't you?

A I knew from the letters from Mr. Gwinn that officials of the Federal Government were trying to talk and negotiate with the D.A.'s Office in Nassau County.

Q You knew they were talking to them, didn't you? You knew there were conversations and other communications on your behalf by various officials in the United States Government; you knew that?

A That's correct.

Q You didn't forget about that on May 1973, either, did you?

MR. EDWARDS: Objection, your Honor.

THE COURT: Overruled.

Q You hadn't forgotten about that?

A I just got done telling you I had forgotten about Mr. Dillon, the State Assistant D.A. reading that letter in front of the judge when I was allowed to plead to the charge.

Q You also knew, did you not, that extensive negotiations on your behalf were made by various people in the United States Government with Mr. Kahn's Office?

A I think I have answered that about three or four times now.

Q You never answered it directly yes or no; did you know that?

A Yes, I have answered it directly, Mr. Duke, and I have told you yes about three times or four.

Q Then the answer is -- isn't the answer also yes to my question that you deliberately lied in May of 1973 when you said you didn't know that the Government had intervened at all?

MR. EDWARDS: Objection, your Honor. I'm rising because I think if you read the question and answer that was put to him in May '73 there is no conflict in the fac t that people were talking to the people in Nassau County.

THE COURT: Well, it seems to me -- has the question and answer in May 1973, have you read that?

MR. DUKE: Previously, yes.

THE COURT: Could we have it again?

MR.DUKE: "Q Yes. You were permitted to plead guilty to manslaughter on a murder indictment in Nassau County, isn't that correct?

"A That's correct.

"Q Wasn't that as the result of the intervention of

the United States Government in exchange for your testimony here?

"A I don't know that the United States Government intervened at all. I just know I went on trial for murder, and sat there for one week, and on the eighth day of that trial, I believe, my attorney and Mr. Dillon, the attorney for the State, District Attorney, said that I had a choice, I could plead guilty to manslaughter in the first degree with no stipulated sentence, and I did so."

THE COURT: It seems to me we know what Mr. Lipsky was aware of and what he says he forgot, and I think we have all we need on this.

Q Mr. Lipsky, is it difficult for you to lie?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Does the oath mean anything to you, Mr. Lipsky?

A Yes, it does.

Q What does it mean?

A It means you sit here and swear to tell the truth, to the best of your ability and the best of your knowledge and the best of your memory.

Q Does it mean that you also must tell the truth?

A Yes, it does.

Q Did it mean that in May of 1973?

A Yes, it did.

Q Did it mean that in June of 1972?

A Yes.

Q Did it mean that in December of 1972?

A That's right. Yes.

Q Did it mean that on May 7, 1970 when you testified to the grand jury in Florida?

A Yes.

Q Did it mean that on May 11, 1972 when you testified to a grand jury in this courthouse?

A Yes.

Q It means the same thing today that it meant on all those occasions; is that correct?

A Yes, it does. Did. Does.

MR. DUKE: Your Honor, I think this would be an appropriate point to adjourn.

THE COURT: All right.

Ladies and gentlemen, we will adjourn u... 9:30 tomorrow morning. If you will,remember my admonition about not discussing the case with anybody, even among yourselves, and not looking at newspapers, television or listening to the radio.

Have a good evening. 9:30 tomorrow morning.

(The jury left the courtroom.)

MR. WALL: May we approach the bench? The door is open.

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(In the robing room.)

MR. WALL: Your Honor, we would like to make an offer of proof for you to consider overnight with respect to this particular issue that has just been raised and as to which your Honor thought that enough had been introduced. The difficulty that we find is that Mr. Lipsky, when confronted with testimony which is apparently false, indicates that he has a bad memory or, although on other occasions he indicates he has a good memory. We have a series of documents, all of which are known to Mr. Lipsky because he either wrote them or received them, indicating an extensive course of conduct on the part of this office here to intervene on his behalf with Mr. Kahn and Mr. Dillon in Nassau. Mr. Kahn was initially adamant, he believed he had an exceptionally good case, a case which indeed Mr. Lipsky described as an open and shut case with Lipsky as the loser. Negotiations broke off. That is contained in a letter received by Lipsky. Lipsky then sends a letter to Gwinn stating that he is fearful now that the U.S. Attorney's office won't intervene on his behalf because the tapes became public and he is very depressed over that. That is a letter to Mr. Morvillo, former Chief Assistant in this office.

Your Honor, when the jury hears I forgot and the jury realizes that this man was in prison at the time, I

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don't think the jury can accurately gauge whether or not that was a deliberate lie back in May, '73, or whether he possibly forgot and I think that we are entitled to show that no rational human being could possibly have forgotten the whole series of negotiations in which he was most interested and more importantly, on the very day when he is allowed to plead to a crime where he doesn't have to have a mandatory term, he has a letter, a fulsome letter of praise of his ability read to the judge in open court in his presence and I think unless the jury realizes that he had to have that knowledge, they may conceivably believe that what he did in May was not deliberate perjury.

THE COURT: It seems to me, Mr. Wall, that first of all the question and answer that we are dealing with was not quite as precise as what you and Mr. Duke are trying to make out of it. It is perfectly clear from Lipsky's testimony that he was fully aware in May that the government was working on his behalf with the authorities, I think that is perfectly clear to the jury. He has taken the position that he forgot that this letter was read and the jury can evaluate his testimony and they can believe it or not as they see fit and my notion was that we had gone about as far as we could go with it. Here was this question and answer which, it seems to me, is arguably a little ambiguous and I don't

know what more you can do. You can get him to say, perhaps, that it was a deliberate lie. I didn't think you wer going to get him to say that, but I don't think you need to get him to say that. He doesn't deny that he was aware of the fact that these negotiations had been going on. He doesn't deny that he was aware of the fact that this letter had been read. He says he forgot that it was read.

MR. WALL: May I make one suggestion, your Honor. Rather --

THE COURT: I thought you made your point.

MR. WALL: Maybe I am neurotic. I didn't think we made it as strongly as I think the record would justify.

Might we simply tomorrow without asking him any questions present them with the letters to him from Gwinn and his letters to Gwinn, simply ask him whether he received and read the letters from Gwinn and whether he wrote the letters to Gwinn which bear on this and we will offer them in evidence. We will not read them in front of the jury. We can use them in summation.

MR. EDWARDS: May I be heard on that, your Honor?

THE COURT: Of course.

MR. EDWARDS: I would be happy to sit down with counsel and look at these things this evening. I don't have every line of every one of those letters in mind and therefore,

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I cannot take a position now as to whether they all ought to be received in evidence or not. This really, you know, to my mind, is making a lot of heavy weather and are very little. The fact is that the question that was read was whether his plea resulted in the intervention of the federal government.

MR. WALL: He said they never intervened at all.

MR. EDWARDS: I don't know what he means by intervened. I assume he means intervened in connection with the plea that actually took place. He has never denied that he and his lawyer were hoping that the federal government was going to succeed in talking Nassau County into somehow recusing the charges in return for all his cooperation.

MR. WALL: One final comment. I think Mr. Edwards forgets that immediately after the plea and before sentence there is a whole batch of letters where Lipsky complains to Gwinn that Gwinn can get the feds to go tell Judge Spitzer what to give. The feds have done it before, they can just go tell this judge what sentence to give. They did it before and they can do it again and he is being treated as a second class stoolpigeon. He knew what power he had. To say he didn't understand, that's his explanation for the jury.

MR. EDWARDS: That has no relevance to what either

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of us has been saying earlier. I remember those letters very well. As with everyone sitting around in jail, listening to the other people in jail, he thinks that everyone is being treated better than he is and he thinks that some powerful person some place ought to talk to the judge and tell the judge what to do, as if anyone could.

Sure, I wouldn't even mind putting a couple of those letters in evidence. I am ready to look at the correspondence and concede what we think can be put in evidence. I would hope that an over lengthy cross-examination can be brought to a speedy conclusion.

THE COURT: Well, I am sure we all hope that. It does seem to me, Mr. Wall, that the crucial point here is that, from your standpoint, is that you want to show, to the extent you can, that Mr. Lipsky was not being completely honest in May, 1973, that there were things that he was aware of and his answer to this question may have been arguably technically correct, but I think the jury can decide whether or not he was avoiding the guts of the problem. But I suggest you go over this problem with Mr. Edwards and there may be a way to nail down the point that you want to make with a minimum of effort.

(Court adjourned.)

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UNITED STATES OF AMERICA

v. 73 Cr. 105

VINCENT PACELLI

January 23, 1975
10:05 a.m.

(Trial resumed)

(In open court; jury present)

B A R R Y G. L I P S K Y, resumed.

THE COURT: Good morning, ladies and gentlemen. Good morning.

MR. EDWARDS: Good morning, your Honor.

MR. WALL: Your Honor, the Government and the defense have entered into an agreement that certain portions of certain documents not yet in evidence should be marked in evidence and read to the jury at this time.

MR. EDWARDS: That is correct, your Honor. I have conferred with Mr.Wall and we have agreed that he read certain portions of the papers that he now will.

I am reserving the right to perhaps offer other portions at a later time.

THE COURT: Yes.

MR. WALL: The first item, your Honor, is a portion of a letter of June 23, 1972 to Mr. Barry Lipsky from Mr.

Walter E. Gwinn. That portion reads as follows:

"However, I have talked to several officials and have encouraged them to begin discussions with the State officials."

The next is a letter, again from Mr. Gwinn to Mr. Lipsky, dated July 25, 1972, and those portions read as follows:

"I have been discussing certain matters with the people in the city today, and they plan to have a discussion with Mr. Dillon when he comes back from vacation."

I think, your Honor, Mr. Edwards and I agree that the Mr. Dillon referred to throughout some of these letters is a Mr. Frank Dillon who at that time was the head of the Homicide Bureau in the Nassau County District Attorney's Office and not Mr. Dennis Dillon, who is presently the new district attorney of Nassau County.

MR. EDWARDS: That is correct, your Honor.

MR. WALL: Continuing:

"I fell that we will be able to move rather rapidly towards a solution to your problem once contact is made with Mr. Dillon."

The next item is a letter from Mr. Gwinn to Mr. Walter Phillips, United States Attorney's Office,

U. S. Courthouse, Foley Square, re: Barry Glen Lipsky, and the portion reads:

"After our conference with Judge Kelly" -- who was a county judge in Nassau County, your Honor -- "After our conference with Judge Kelly, I had a lengthy discussion with Mr. Lipsky and I informed him of the judge's inclination to sentence him to fifteen years if the State agreed to charge him with manslaughter. Incidentally, the Court also took under advisement my motion to dismiss. I am writing to you in view of Judge Kelly's further statement that he would reconsider the fifteen-year sentence and consider a five-year sentence that I had suggested, if the agents of the United States Government were 'persuasive.' Mr. Lipsky told me that he believes that fifteen years is not a fair sentence in view of the facts and circumstances of the case, and he asked me to request some assistance from the Covernment before the Court and after the next conference, if the judge does not change his mind, Mr. Lipsky has then instructed me to prepare the motion to suppress and to set the case for trial. Mr. Dillon is to notify me by August 22nd as to whether or not Mr. Cahn would agree to a change from the charge of murder to that of manslaughter. It is really amazing that this decision could not be reached within six

months."

MR. EDWARDS: Your Honor, perhaps it would be appropriate for you to explain who Mr. Cahn is.

MR. WALL: Mr. Cahn was the former district attorney of Nassau County, then acting as district attorney pending the proceedings against Mr. Lipsky.

Continuing:

"Therefore, it appears that the time has arrived when the Government, through its agents, must do whatever it can to assure some sort of justice. Mr. Lipsky has given me a list of people that he has asked to come to the next conference to be present during the discussions with the judge, in private and in his chambers. Mr. Lipsky informs me that he has been taken from the State institution to the Federal Building on more than a dozen occasions. He has asked me to ask you to have the following men appear and give the judge the benefit of their opinions and the value" -- I think it should be "on the value" -- "of the services rendered by Barry Glen Lipsky. They are as follows:

"1. Yourself, Walter Phillips.

"2. Mr. Joe Lore.

"3. Mr. Gary Feffer.

"4. Mr. Benjamin.

"5. Mr. Joe Salvemini.

"6. Mr. John Walker.

"7. Agent Roques.

"8. Agent Pons.

"9. Agent Dombrosie.

"It would also be helpful if Mr. Mollo or Mr. Morvillo or even the District Attorney himself, could find time to come to this conference."

Your Honor, Mr. Mollo was, I believe, the Chief Assistant United States Attorney at the time. Mr. Morvillo was the chief of the Criminal Division, and the District Attorney himself, I believe refers to Whitney North Seymour, Jr.

MR. EDWARDS: That is correct, your Honor.

MR. WALL: The next item, your Honor, is a letter from Mr. Gwinn to Mr. Lipsky dated August 29, 1972; the portion we have agreed upon reads as follows:

"In any event, Mr. Morvillo and Mr. Phillips are scheduled to have a conference with Mr. Cahn on September 8th. They have asked that I wait until that meeting is held before I proceed any further. However, I have decided that if there is nothing forthcoming from the conference on the 8th day of September, then I intend to file my demand for speedy trial and also request a

hearing on the motion to suppress the statements that were taken from him."

The next letter, your Honor, is a letter from Mr. Gwinn to Mr. Lipsky dated September 12, 1972. The pertinent portion reads as follows:

"The negotiations between the U. S. Attorney's Office and Mr. Cahn have broken down completely. Therefore, I have prepared my motion to suppress the statements taken from you. I have also asked the judge for a ruling on my motion to dismiss. I am also asking for a hearing date prior to trial. I will write you next Monday and give you full details. Mr. Phillips and the others did all that they could, but they have no jurisdiction over Mr. Cahn, so I am going to prepare your case for trial."

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MR. WALL: The next item, your Honor, is a letter from Mr. Gwinn to Mr. Lipsky dated October 30, 1972, and the pertinent portion reads:

"I also plan to discuss your tax matters today with Mr. Betz and have requested a conference with the Internal Revenue Service which has been granted here in Miami. The date and time will be determined later."

I might say, your Honor, Mr. Betz was at the time of the writing of this letter the head of the Joint Task Force operating out of the Southern District of Florida located in Miami.

MR. EDWARDS: That is correct, your Honor.

MR. WALL: The next letter, your Honor, is from Mr. Lipsky to Mr. Gwinn dated Friday, November 30, 1972. It reads as follows:

"Dear Mr. Gwinn:

I received just now your letter of 10/30/72. I also received last week your demand for a speedy trial and also your reply to the Internal Revenue Service people. In the demand for a speedy trial, it stated that I've been in this jail since March 4, 1972. Actually, I was placed in here on Friday, March 3, 1972, if it makes any difference. I am here eight months today. Also, your last two letters to me have gotten to me unopened; opened only by me. The

letter from you is informative of what you are doing; but of course I have no way of knowing what the D.A.'s office is going to do or not do. I'd like to ask you if that person whom we discussed on the phone in September will be able to be of any helpful assistance to you if and when the motion to suppress comes up. Why do you believe they are continuing to let me lay and rot here and not bring the case to court? Is there any time limit that you know of which they are forced by the law to operate under? You said in a previous letter that D.A. Cahn's office was trying to prohibit your hearing -- can you get the hearing anyway? I am thinking that Mr. Cahn may want more big TV and newspaper headlines from this case and at my expense, and also that since he would not cooperate with the federal authorities in my behalf he now is going to try to 'get back at them' through me, because of their efforts to try to help me out.

"About the federal people and the two or more cases I am involved in with them, do you know if they plan to continue to pursue those two cases along with me? You mentioned Mr. Betz in your ldter.Laying here as I do, I realize that I have certain information about past criminal acts by persons in the south Florida area which I have completely forgotten about. I will tell you about this at

a later time. About the dolphins, they are the one bright thing I can identify with at this time. One game at a time, but so far so good! Mr. Gwinn, if any dates are set for your hearing or anything else important arises, I'd appreciate your letting me know about it.

"Sincerely,

Barry Lipsky."

The next, your Honor, is a letter from Mr. Lipsky to Mr. Gwinn dated Friday, December 22, 1972, and the pertinent portion reads as follows:

"I now believe that my position with regard to whether or not the authorities at the Federal Court now want to aid me is very much weaker."

The next, your Honor, is a letter from Mr. Lipsky to Mr. Morvillo, who has already been identified as the head of the Criminal Division in the United States Attorney's office in the Southern District, and the pertinent portion of it reads:

"I will close this letter here, but I want to let you know that I do appreciate all that you and Mr. Phillips have tried to do to help me out with the Nassau D.A.'s office, even though Mr. Cahn has been very uncooperative."

The next, your Honor, is a letter dated January 2, 1973, from Mr. Gwinn to Mr. Lipsky, the pertinent portion

reading as follows:

"I, nevertheless, expect them to 'help' if they are ever given a chance to do so."

And continuing:

"Therefore, do not be concerned about what the government can do for you. I have no doubt that all of these gentlemen would come forward any time I need them."

The next, your Honor, is a letter dated Thursday, February 15, 1973, from Mr. Lipsky to Mr. Gwinn. The pertinent quotations from it are:

"The federal government wants me to 'hand them' Pacelli's head on a silver platter, but they don't want to do anything for me very much in return."

The next:

"In my estimation from what I am doing for the government, I should never be forced to go to prison."

Finally:

"Mr. Lore asked me for some information about myself recently to enable the government to pay me money for the information I had given them. No amounts were mentioned."

The next letter, your Honor, is dated July 17, 1973. It's a letter to Mr. Gwinn from Mr. Lipsky, and the pertinent portions read:

"I am very confused as to when exactly I will be eligible to go to a Parole Board, but I will try to get Bobby Bauman and to tell me how the N.Y. law reads."

The record ought to indicate that Bobby Bauman is Robert Bauman, who is local counsel in Nassau County to Gwinn.

MR. EDWARDS: That is right.

MR. WALL: "I also hope you will plan to continue to represent me until the time comes that I am paroled. I'll also keep in contact with Walter Phillips, because I believe that I'll need him to go to bat for me, in order or me to make progress in this matter."

And finally, your Honor, a letter dated Sunday, July 22, 1972, from Mr. Lipsky to Mr. Gwinn, the pertinent portion reading:

"At this point since being sentenced as I am, I believe very strongly that it is going to be up to the efforts of Mr. Phillips and maybe Mr. Betz, how soon I can obtain a parole."

And continuing:

"That Mr. Phillips can and did far more than what I thought he was going to do. So, therefore, it is again Mr. Phillips who can help me to get out."

I think, your Honor, that completes those matters

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which Mr. Edwards and I have agreed upon.

THE COURT: All right.

CROSS EXAMINATION CONTINUED

BY MR. DUKE:

Q Mr. Lipsky, on March 2, 1972, you were interviewed by and interrogated by a number of state and federal law enforcement officials? Is that correct?

A That is correct.

Q Did you ultimately give them a signed, written statement concerning the Parks murder?

A I did.

Q Did you also answer questions put to you by Mr. Scaring, an assistant state's attorney, on March 3, 1972?

A I did.

Q And those were stenographically taken down? Was somebody there with a machine taking down the questions and answers?

A That is correct.

Q Did you also testify concerning the Parks murder before a federal grand jury in this courthouse?

A I did.

Q On January 31, 1973?

A I think that was the date.

Q Did you tell the truth in these three statements?

A Yes, I told the truth in those statements.

Q Showing you something marked 3506, do you recognize that as your grand jury testimony?

A Yes, I believe so.

Q And 3508, is that the statement you gave to Mr. Scaring on March 3, 1972?

A Yes, I think so.

Q I am showing you 3531A, except for the blocked out portion, is that the statement that you gave to the authorities on March 2, 1972?

MR. EDWARDS: Your Honor, may we approach for a moment on this?

THE COURT: Yes.

Q (Continuing) Mr. Lipsky, I show you Exhibit 3550B, is that the full statement that you made to Nassau County and federal authorities on March 2, 1972?

A Mr. Duke, that statement was taken down in longhand. This is a transcription, I believe, of that statement.

Q Is that an accurate transaction of the longhand statement you referred to?

A Yes, sir.

Q Does it bear your signature in several places?

A Yes.

Q Was this statement given to Sergeant Bonora of

Nassau County?

A The written statement?

Q Yes.

A Yes.

Q And was Detective Robert Walker also present?

A Robert Walker?

Q R. Walker.

A I believe he was in the room. I am not a hundred per cent sure. I believe he was in the room also.

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AM 3

Q Mr. Lipsky, did you at any time believe before it actually happened that Miss Parks would be killed?

A Would you clarify your question for me, please?

Q When you left Mr. Pacelli's apartment on the morning of February 4th, did you believe that he intended to kill Patsy Parks?

A Yes.

Q Did you tell Mr. Scaring on March 3, 1972, Page 50, "... I didn't really believe that he was going to kill this girl"?

A I think I may have said that in the statement, Mr. Duke, but there was a point --

Q Just, please, answer my questions.

A The answer to your question -- would you read the question back?

Q Did you tell Mr. Scaring, "I didn't really believe that he was going to kill this girl"?

A I told him that.

Q When you got into the car with Mr. Pacelli and Patsy Parks after you left the Hippo for the second time, did you, yourself, intend Patsy Parks to be harmed?

A Do you mean did I intend to kill her, myself?

Q Did you intend her any harm?

A Can you be more specific with your question?

Q Did you testify in August of this year -- of last year, in Florida?

A Yes.

Q And were you asked this question and did you give this answer --

MR. EDWARDS: May we have the page?

MR. DUKE: Page 181.

Q "Q Anyway, you told them about the murder of this girl. Anyway I think you said that you didn't intend her any harm when you went in the car and she was murdered.

"A That's true."

Were you asked that question and did you give that answer?

A Yes.

Q And were you under oath then?

A Yes.

Q Did you ever have any intent that Patsy Parks be harmed in any way, Mr. Lipsky?

A After I was in the car with Pacelli --

Q Can you answer the question I put to you, Mr. Lipsky?

A The answer is yes.

Q When did you intend for Miss Parks to be harmed? When did that intention --

A When --

Q -- enter your mind?

A When Pacelli told me to go in and buy the gasoline for the purpose of burning up her body.

Q At that time you intended for her to be burned alive -- burned up; is that right?

A I don't know if that was going to happen. I didn't know if that was going to happen.

Q Did you intend for it to happen?

MR. EDWARDS: Your Honor, I think the question is unduly ambiguous. Perhaps he could clarify what he means by the word "intend."

MR. DUKE: I think everybody in the courtroom knows what "intend" means, your Honor.

MR. EDWARDS: Not in this context. I think it is perfectly obvious there is an ambiguity here.

THE COURT: If I recall correctly, the witness said a few moments ago that he expected it to happen.

Is that right?

MR. DUKE: I don't recall that.

THE COURT: Well, perhaps not.

I'll allow the question.

MR. DUKE: Would you read back the question, Mr. Reporter?

(Question read)

A As I just got done telling you, after I was instructed to buy the gasoline, which I did, I thought there was a good possibility that some harm would come to her.

Q Mr. Lipsky, did you intend harm to her?

MR. EDWARDS: I am objecting, your Honor, as it seems to me his answer is clear, and the question is ambiguous.

THE COURT: I will sustain the objection.

Q Mr. Lipsky, did you write a letter to your attorney on January 17, 1973, to Mr. Gwinn?

A You have to show me the letter, Mr. Duke.

MR. DUKE: This is a letter bearing X-93.

Q Showing you X-93, Mr. Lipsky --

MR. EDWARDS: Your Honor, I'm sorry. That's not a number in this case. May we have it marked for identification?

THE COURT: We will have it deemed marked for identification as the next letter.

MR. EDWARDS: Here comes the clerk, your Honor.

THE COURT: We're saved.

xxx (Defendant's Exhibit U was marked for identification.)

Q Showing you Exhibit U for identification, would

you look at that portion, please?

Did you tell your attorney, Mr. Lipsky, that you had no intent for Patsy Parks to be harmed in any way?

A Yes, I did.

Q Were you lying to your attorney?

A Yes, I was.

Q This is two days after you pled guilty to the manslaughter of Patsy Parks?

A Yes, I think that's the correct date.

Q When, Mr. Lipsky, in this chronology of this story did you decide that you wanted to help kill Patsy Parks?

MR. EDWARDS: Objection to form, your Honor.

THE COURT: Yes, sustained.

Q Did you decide at some point to help kill Patsy Parks?

A I followed the instructions that I was given by --

Q The question, Mr. Lipsky --

MR. EDWARDS: Your Honor, I think that answer is responsive.

MR. DUKE: I move that it be stricken.

MR. EDWARDS: I think he ought to be allowed to answer it.

THE COURT: I don't think it's responsive.

I'll strike it.

Can you ask the question again --

Or, Mr. Reporter, can you read it back?

MR. DUKE: Mr. Reporter, would you read it back, please?

(Question read)

Q Yes or no.

A Yes.

Q When, in point of time, did you decide that?

A When Pacelli told me to go in and buy the gasoline for the purpose of burning up her body.

Q What time did you meet Febre at the Hippopotamus on the night of February -- the night of February 3rd, the morning of February 4th?

A When I first walked in. When I first entered around 11:30, a quarter to 12:00, somewhere in that area.

Q Were you sitting at the table with Febre when Patsy Parks walked in?

A Yes.

Q And Febre told you to talk to Patsy Parks; is that correct?

A Yes.

Q Did he say you could handle it, you could handle the matter with Parks?

A Did he say that?

MR. EDWARDS: To whom, your Honor?

MR. DUKE: To Mr. Lipsky.

A I don't remember his saying that I could handle it, but I remember him saying she wants to talk -- go and talk to her. She wants to talk to you. She wants to talk to you, go and talk to her.

Whereupon I said I have nothing to talk to her about.

Then he urged me strongly to go and talk to her. He said it was important.

Q Why didn't you want to talk to her?

A I had no reason to talk to her. I had never spoken with her much before, other than to say hello and good-bye. We weren't friend. I just -- just passing acquaintances. I had seen her at his wedding. She always seemed to have a problem of some sort. I just didn't feel like getting up from where I was and going over to talk to her.

Q Even though she was visibly upset?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Before Patsy Parks walked into the Hippopotamus that night, you knew that she had given grand jury testimony

in a narcotics case, didn't you?

A I had heard bits and pieces of different conversations where her name was mentioned in connection with something about a grand jury and a box; her name along with other names.

Q You knew that she testified, you had heard that she had testified about a box in connection with a narcotics case?

A To my best memory, as I have just repeated to you, I had heard bits and pieces of different conversations about her and other people concerning a box and a narcotics arrest of Pacelli and grand jury testimony, or a grand jury appearance.

Q Did you discuss that with her at the Hippopotamus?

A Discuss which?

Q That information that you had prior to her walking in.

A As I said here Tuesday, I think it was, or Wednesday, she told me that two men had been to her apartment with a subpoena with her name and Pacelli's name on it --

Q Mr. Lipsky --

MR. EDWARDS: Your Honor --

THE COURT: I think that question you can answer

yes or no, Mr. Lipsky. The question was, did you discuss it with her.

Read it back, Mr. Reporter.

(Question read.

MR. EDWARDS: Your Honor, may we approach on this?

THE COURT: Yes.

(At the side bar)

MR. EDWARDS: Your Honor, I am not suggesting that it is intentional; however, I do believe that questions are being put to the witness which are ambiguous and that this is an example. It appears to me that that question is difficult to understand because Lipsky has testified that he discussed the subpoena with Patsy Parks concerning the box and so forth. The question is not clear as to whether is really asking did Lipsky and Patsy Parks discuss the matter of the grand jury testimony and the box, or does the question mean did Lipsky and Patsy Parks discuss the fact that Lipsky had heard about it previously.

I don't know which the question means. I don't see how Lipsky could. I would request,your Honor -- may I make a request, your Honor? I think the witness should be told that if he is unable to answer a question accurately either yes or no, he should say that he is unable to answer

the question accurately yes or no.

THE COURT: All right, I will do that.

I think on this one, I suppose the question could be clarified, Mr. Duke. I think the question is intended to mean, "did you discuss with Patsy the bits and pieces," but let's do the question again.

MR. EDWARDS: Would your Honor instruct the witness?

THE COURT: Yes.

(In open court)

THE COURT: Mr. Lipsky, if you can answer a question yes or no, you should do so.

However, if you cannot answer the question yes or no, either because you don't understand the question or for any other reason, you can make that clear.

Q Mr. Lipsky, had you -- before Patsy Parks walked into the Hippopotamus, had you heard that she had been to the grand jury about something involving a box of money or a box of something else, and she had some certain knowledge concerning a case, a criminal case, had you heard that --

MR. EDWARDS: Asked and answered, your Honor.

THE COURT: Yes, I think so.

Sustained.

Q Did you discuss with Patsy Parks on the night of -- on the morning of February 4th in the Hippopotamus, the box?

A I think we did, to the best of my memory, but I can't be a hundred percent sure.

Q Did you discuss her having testified to the grand jury concerning the box?

A That's possible that that was discussed with she and I, but I don't recall that, that being said, but it's possible it was said. I don't we discussed that grand jury at that time.

Q This glimpse of conversation or gossip concerning the box and the grand jury testimony, did that gossip occur in the Hippopotamus?

A You mean the previous knowledge?

Q Yes.

A No, I don't think it occurred in the Hippopotamus.

Q Did any of it occur in the presence of Benny Febre?

A I don't recall any of that being said in front of Benny Febre.

Q Did the conversations concerning this matter occur in night clubs?

A No, not that I recall.

Q Discotheques?

A Not that I recall.

Q Did any of these conversations occur in the presence of Frank Serrano?

A They may have, but I'm not sure.

Q What is your best recollection?

A I just gave you the best answer I can give you. I'm not sure.

Q Mr. Lipsky, when you say something may have happened, what do you mean?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, I want to ask you if Mr. Scaring on March 3, 1972 asked you these questions and if you gave these answers:

MR. NESLAND: Page, please?

MR. DUKE: 50.

Q "Q Mr. Lipsky, why did you do all this on his behalf, on Pacelli's behalf?

"A Because I didn't really believe that he was going to kill this girl. I didn't go up and take him out of his house in the knoewledge that he was going to kill this girl.

"Q Well, let me stop you there. Why did you go up

to his house at that hour of the morning, based on the conversation that you had?

"A Because she told me she needed to see him and I guess I wasn't thinking. I know I wasn't thinking clearly. And to go up to his house, but she told me it had to do with his case and it was a subpoena and she thought he should know about it, and nobody knew how to reach him, and so --

"Q Well, didn't you have the telephone number?

"A He doesn't have a phone.

"Q Couldn't you tell her where he lived?

"A No. He was very particular that nobody should know where he lived.

"Q But why, because of this particular girl, why would you go up at that particular time of night? Why didn't you tell her to wait till the morning?

"A Don't know exactly why. I didn't tell her to wait till the morning, but I knew that there had -- I had heard some glimpses of conversations in the past that this girl had been to the Grand Jury about Pacelli and it was something involving a box of money or a box of something else, and she had some certain knowledge that he would want and he was having some kind of case, he had some type of case, criminal case coming up.

"Q Where had you heard all this information?

"A Just in idle gossip in the last, you know --

"Q What was your relationship to Pacelli that you felt that you had to get involved in something like this?

"A I met him through his wife, who I had met through his girl, Margie Jacklone, and then he got married, he was getting married in St. Patrick's Cathedral and I was living downtown at the time with this friend of mine, Benny Febre, and he said to me he doesn't have the head to conduct a wedding of the type he wants to throw for her people. He made the wedding, not -- not his wife's people, out of Detroit.

"He -- he made the wedding. He said, 'I want to have a real nice wedding and I know you know how to do this type of thing.' This was an original come-together. This was the -- this was the original way I began to -- to know him a little bit.

"Q Well, what other kind of relationship did you have other than this kind of business relationship?

"A I used to go out at night at different times and I would go out and I'd see him out in the discotheques and the place Directoire, where people used to go, you know, dance and drink, and I saw him around and he was a very quiet, mild-mannered guy, never bothered anybody, never, quiet, sat still, and we used to just speak.

"Q Mr. Lapsky, Mr. Lipsky, I'm sorry. Quite candidly, you've told us very specifically that when you spoke with Pacelli at his house concerning Patsy Parks, he indicated to you at that time, and you accepted it and you believed it, that he was going to kill the girl, that he indicated he was going to kill Patsy Parks.

"A Yes, sir.

"Q That he then stopped the car and got gasoline for the purposes of doing away with the body, and he set forth of plan of action where you were to participate in getting her out to the car and participate in everything, other than the actual stabbing.

"A That he was going to do it, right.

"Q Of the woman. Now, what kind of a relationship did you have with this man that you would get yourself involved in that kind of a situation?

"A I just -- I didn't have any, really. I guess I had a close relationship with him but it was born by his -- by his, you know, by his way of thinking, I guess. He thought I could -- he could trust me.

"I had some trouble in Florida in the past with a case involving stocks and bonds, which he knew some of the participants, and I had gotten convicted of conspiracy and got a -- my sentence was three years' probation, and

he knew about that, and he had heard about that through some people down in Florida and through myself.

"And mainly it was the wedding that I got friendly with him about."

A I can't hear what you said.

Q "And mainly it was the wedding that I got friendly with him about.

"Q Now, my point is, Mr. Lipsky, you knew that he was going to commit a murder and he was asking you to participate.

"A When I was in the car he was talking to the girl about -- about sending her away and he lulled me to sleep, and I really thought at the time that he -- even after he bought the gas, I didn't -- I thought he was going to, you know, talk to her.

"I thought he was going to talk to her, and then if he didn't, you know, I didn't know whether he was going to go through with this or not. He bought the gas but he didn't have to go and do it. And then he went ahead and was talking to her about -- about going away and giving her a bunch of money to go away with and -- and then he just -- he was just lulling me to sleep also, 'cause he didn't have any --"

Were you asked those questions and did you give

those answers, Mr. Lipsky?

A Yes, I did.

Q "Q Mr. Lipsky, when he got out of the car, when he gave you the ultimate signal that you were to drive the car, at that point there was no doubt in your mind that he was going to kill her?

"A No, that's when I didn't watch.

"Q But at that point you're still talking about the fact that he was going to commit a murder. Now, your relationship does not seem to be that type that you would want to get involved in such a situation."

MR. EDWARDS: Your Honor, just for clarification, since he is reading from this paper, I assume the portions he is reading he is offering in evidence. And I have no objection.

THE COURT: I assume so.

Q When I was interrupted, I think I was reading this question:

"Q But at that point you're still talking about the fact that he was going to commit a murder. Now, your relationship does not seem to be that type that you would want to get involved in such a situation.

"A I -- my wrong move was going up to his house in the first place that night.

"Q Were you in any way involved in the criminal prosecution?

"A No, sir.

"Q Were you in any way involved in the investigation or the matter which he was indicted for?

"A Not one bit whatsoever.

"Q Did you know anything about it?

"A Just very, very sketchy.

"Q Well, did you have any criminal activity or any participation with him in any criminal activity other than this marriage?

"A No, I did not.

"Q With respect to the incident that you had in Florida with the stolen stocks and bonds?

"A Yes, sir.

"Q Was he involved in that at all?

"A No, I did not know this man at that time.

"Q Did he have anything, did he threaten you at any time, or did he have anything over you?

"A No, he never threatened me. Very mild-mannered, very quiet."

Were you asked those questions and did you give those answers?

A I did.

T4

Q Mr. Lipsky, when you arrived at Pacelli's apartme when you say you went up there that night, were the lights on in the house? In the apartment?

A Yes.

Q Was somebody in the bedroom?

A Yes.

Q Were the lights on in the bedroom?

A You mean when I was outside?

Q Yes, before you threw the pebbles on the bedroom window.

A I don't know if there was someone in the bedroom before I threw the pebbles or not, but when the curtains opened just after I threw the pebbles there were people in the bedroom.

Q Were there lights on in the bedroom before you threw the pebbles?

A I think so.

Q Whom did you see when the curtains opened?

A Beverly Pacelli and Ida Bracer.

Q Did you tell Mr. Scaring that only Beverly Pacelli appeared in the window?

A I'm not sure. I think I did.

Q In fact, you didn't mention Ida Bracer at all in any of those statements in Nassau County?

A No, I don't think so.

Q And you didn't mention Al Bracer at all in any of those statements, did you?

A No.

Q When these women appeared at the -- was it a door or a window --

A A window.

Q Was it a full length window or a short window?

A A picture window.

Q What kind of clothes werethey wearing?

A I think Beverly Pacelli had a robe on and Ida Bracer was dressed, I believe.

Q Why did you toss pebbles on the window?

A To attract their attention to come to the window, because if I had gone to the front door at that time at night and rung the bell it would have alarmed everyone in the apartment, because no one came to the apartment unless they were expected.

b2

Q Don't you think it would alarm people to throw pebbles at their bedroom window?

A In this case, sir, it would have alarmed a lot more if somebody had just rung a bell at that hour of the night rather than throw pebbles to the window.

Q Why didn't you talk to them on the intercom and

say, "This is Barry. Let me in."

A I just thought it was better to throw the pebbles at the window and attract their attention that way.

Q Do you think that would have alarmed them if you buzzed and said, "This is Barry. I want to see you?"

A Maybe not. But I just thought that throwing the pebbles would be a better way of doing it than going around to the front and ringing the bell or the intercom.

Q You thought that would alarm them less than saying, "This is Barry Lipsky"?

A That is correct.

Q They let you in and you went up in the apartment?

A I went into the apartment and they let me in.

Q Who was there?

A Pacelli, his wife, Beverly, Barbara Jalaba, Al Bracer and Ida Bracer, his wife.

Q Was Abby Perez there?

A I don't recall Abby Perez being there. I don't believe he was there.

Q He was there later that night, wasn't he?

A The next morning.

Q But he was not there the night before? He wasn't there when you first arrived at the apartment?

A Not to my knowledge, no, he was not.